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Vol. I

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749458
Sup. Ct.

TRANSCRIPT OF RECORD

(Pages 1 to 110)

Supreme Court of the United States

OCTOBER TERM, 1946

No. 759

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION

No. 760

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA.

No. 781

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 782

JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 811

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI IN NOS. 759 AND 760 FILED DECEMBER 6, 1946.
PETITION FOR CERTIORARI IN NOS. 781 AND 782 FILED DECEMBER 12, 1946.
PETITION FOR CERTIORARI IN No. 811 FILED DECEMBER 21, 1946.
CERTIORARI GRANTED IN NOS. 759 AND 760 DECEMBER 9, 1946.
CERTIORARI GRANTED IN NOS. 781 AND 782 DECEMBER 16, 1946.
CERTIORARI GRANTED IN NO. 811 DECEMBER 23, 1946.

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1 In the District Court of the United States for the District of Columbia

37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

2 *Complaint for Declaratory Judgment and Injunctive Relief*

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

The United States of America, by the Attorney General of the United States, brings this suit against the defendants named above and alleges:

1. This is a suit under the Federal Declaratory Judgment Act (Act of June 14, 1934), Section 274 (d) of the Judicial Code, 28 U. S. C. Section 400, to obtain a declaration of rights and other legal relations, including a declaratory judgment or decree herein, an order for temporary injunctive relief, and such further relief as may be necessary or proper. This court has jurisdiction in this suit by virtue of Section 24 (1) of the Judicial Code, 28 U. S. C. Section 41 (1). A case of actual controversy exists between plaintiff and defendants, which is definite, concrete, real, and substantial, which touches the legal relations of plaintiff and defendants, and vitally affects the public interest. Further, said case of actual controversy admits of an immediate and definitive determination of the legal rights of the parties, and of the public interest, and admits of specific relief through a decree of conclusiveness, as appears at length from the following allegations of the complaint.

2. Defendant United Mine Workers of America (hereinafter sometimes referred to as the "Union") is an unincorporated labor union having as its members practically all the individuals who are employed at and about the bituminous coal mines of the nation. Its members are residents in many of the United States and in this district; they number more than 350,000 individuals. Defendant John L. Lewis is

3 president and the principal officer of the union and as such he has been and now is familiar with and has represented and does now represent the Union in the matters hereinafter described. The defendants now maintain and have long maintained business offices in this district.

3. On or about April 1, 1946, practically the entire body of coal miners represented by the United Mine Workers of America employed in the bituminous coal mines of the nation engaged in a work stoppage resulting in interruptions in the operations of those mines and in a cessation of the flow of bituminous coal from the mines to the railroads and the industrial plants of the nation and to numerous facilities owned and operated by the United States, which require bituminous

coal for their operation. As a consequence, the war effort was unduly impeded and delayed and the continued operation of the national economy during the transition from war to peace was seriously obstructed.

4. On May 21, 1946, the President of the United States issued Executive Order 9728, a copy of which is attached hereto, marked "Exhibit A," and made a part hereof, whereby he authorized and directed the Secretary of the Interior to take possession of any and all bituminous mines the operations of which were so interrupted or threatened with interruption, and, to the extent that he might deem necessary, of any real or personal property, franchises, rights, facilities, funds, and other assets used in connection with the operation of such mines; to operate or arrange for the operation of such mines in such manner as he might deem necessary in the interest of the war effort; and to do all things necessary for, or incidental to, the production, sale, and distribution of the coal produced, prepared, or handled by the said mines.

4 5. Pursuant to the provisions of said Executive Order 9728, the United States through J. A. Krug, the Secretary of the Interior, on and after May 22, 1946, duly took possession of practically all of the bituminous coal mines of the nation. Since that time, the United States through the Secretary of the Interior has been and now remains in possession of the coal mines which had been subject to the National Bituminous Coal Wage Agreement dated April 11, 1945, hereinafter more fully described.

6. Said Executive Order 9728 was issued by the President of the United States by virtue of the power and authority vested in him by the Constitution and laws of the United States, including Section 9 of the Selective Training and Service Act of 1940 (Act of September 16, 1940, 54 Stat. 885, 50 U. S. C. App., Secs. 301 et seq.), as amended by the War Labor Disputes Act (Act of June 25, 1943, 57 Stat. 163, 50 U. S. C. App., Secs. 1501 et seq.).

7. Section 3 of said War Labor Disputes Act (50 U. S. C. App., Sec. 1503) empowers the President to take possession of any plant, mine, or facility equipped for the manufacture, production, or mining of any articles or materials which may be required for the war effort or which may be useful in connection therewith, with respect to which and whenever the President finds and proclaims that there is an interruption of the operation of such plant, mine, or facility as a result of a strike or other labor disturbance, that the war effort will be unduly impeded or delayed by such interruption, and that the exercise of such power and authority is necessary to insure the operation of such plant, mine, or facility in the interests of the war effort.

8. Section 4 of the War Labor Disputes Act (50 U. S. C. App., Sec. 1504) provides that, except as provided in Section 5 of that Act, any plant, mine, or facility whose possession is taken under Section 3 shall be operated under the terms and conditions of employment which were in effect at the time possession of such plant, mine, or facility was so taken.

5 9. Section 5 of the War Labor Disputes Act (50 U. S. C. App., Sec. 1505) provides that when possession of any plant, mine, or facility has been taken under authority of Section 3 of that Act, the Government agency operating such plant, mine, or facility, or a majority of the employees thereof, or their representatives may

apply to the National War Labor Board (now its successor agency, the National Wage Stabilization Board) for a change in wages or other terms or conditions of employment in such plant, mine, or facility; that upon receipt of any such application, and after such hearings and investigations as it deems necessary, such Board may order any changes in such wages or other terms and conditions which it deems to be fair and reasonable and not in conflict with any act of Congress or any executive order issued thereunder; and that any such order of the Board shall, upon approval by the President, be complied with by the Government agency operating such plant, mine, or facility.

10. In accordance with the express authorization contained in the aforesaid Executive Order 9728, the Secretary of the Interior, on or about May 22, 1946, entered into negotiations with the defendant Union, through its representatives, looking toward the establishment of appropriate changes in the terms and conditions of employment at the bituminous coal mines of which possession had been taken on behalf of the United States.

11. As a consequence of such negotiations, the Secretary of the Interior, acting as Coal Mines Administrator, on May 29, 1946, executed an agreement at Washington, D. C., with the defendant John L. Lewis, acting as President of the defendant Union (which agreement is hereinafter sometimes referred to as the "Krug-Lewis" agreement), a copy of which is annexed hereto, marked Exhibit B, and made a part hereof. This agreement, by its terms, "covers for the period of Government possession the terms and conditions of employment in respect to all mines in Government possession which were as of March 31, 1946, subject to the National Bituminous Coal Wage Agreement, dated April 11, 1945".

12. Said National Bituminous Coal Wage Agreement, dated April 11, 1945, was an agreement which had been entered into between the Coal Operators and Associations signatory thereto, represented in the National Bituminous Coal Wage Conference, and the defendant Union, covering all of the bituminous coal mines of the United States represented in said Conference, which constituted substantially all of the bituminous coal mines throughout the nation, establishing the terms and conditions of employment at said mines. A copy of this agreement is annexed hereto, marked Exhibit C, and made a part hereof.

13. On May 29, 1946, the Secretary of the Interior, acting pursuant to the authority of the aforesaid Executive Order 9728 and Section 5 of the War Labor Disputes Act, and in accordance with the provisions of the Krug-Lewis agreement, filed an application with the National Wage Stabilization Board for changes in wages and other terms and conditions of employment at the bituminous coal mines in Government possession. The National Wage Stabilization Board thereupon, on May 31, 1946, issued its order, pursuant to Section 5 of the War Labor Disputes Act, approving changes in wages and other terms and conditions of employment agreed upon in the Krug-Lewis agreement and directed that they be put into effect at the said mines. Said order was approved by the President of the United States, on May 31, 1946. A copy of the order of the National Wage Stabilization Board is annexed hereto, marked Exhibit D, and made a part hereof. Despite the provisions of said Section 5, thereafter the defendants made no applica-

tion to the National Wage Stabilization Board for any change in said order or in the wages or other terms and conditions of employ-
7 ment.

14. Thereafter the defendant Union, through its president, the defendant Lewis, with knowledge of the fact that the Krug-Lewis agreement expressly stated that it was to apply during the period of Government possession of the mines, instructed the members of the Union to return to their employment in the mines. Thereafter and since that time the mine workers and the defendants herein have accepted and retained the substantial new benefits which they acquired under the Krug-Lewis agreement.

15. Notwithstanding the foregoing, the defendant Lewis, on October 21, 1946, addressed a letter to the Secretary of the Interior (a copy of which is annexed hereto, marked "Exhibit E" and made a part hereof), in which he stated that Section 15 of the National Bituminous Coal Wage Agreement, dated April 11, 1945, had been specifically carried forward into the Krug-Lewis agreement, and that under that section, either party to the Krug-Lewis agreement might give ten days' notice in writing of a desire for a negotiating conference upon the matters outlined in said notice; that the other party to the Krug-Lewis agreement was thereupon required to attend said negotiating conference; and that at the end of fifteen days after the beginning of said negotiating conference, either party might give to the other, a notice in writing of the termination of the Krug-Lewis agreement, to be effective five days after the receipt of such notice. Acting pursuant to this erroneous interpretation of the Krug-Lewis agreement, the defendant Lewis notified the Secretary of the Interior that the defendant Union requested "a joint conference of the accredited representatives of the joint contracting parties to the Krug-Lewis agree-
ment of May 29, 1946, for the purpose of negotiating new ar-
8 rangements affecting wages, hours, rules, practices, differentials, inequalities, and all other pertinent matters affecting or appertaining to the National Bituminous coal industry" and suggested that the conference be convened on November 1, 1946, in Washington, D. C.

16. In reply thereto, on October 22, 1946, N. H. Collison, Captain, USNR, as Coal Mines Administrator, acting for the Secretary of the Interior, addressed a letter to the defendant Lewis (a copy of which is annexed hereto, marked "Exhibit F," and made a part hereof), in which the Coal Mines Administrator stated that the Krug-Lewis agreement had superseded Section 15 of the National Bituminous Coal Wage Agreement dated April 11, 1945; that the provisions of said Section 15 were no longer in effect; that, therefore, the Secretary of the Interior and the Coal Mines Administrator were unable to treat the defendant Lewis' letter of October 21, 1946, as a notice given pursuant to any existing contract provisions; and that the Coal Mines Administration considered the Krug-Lewis agreement in full force and effect; but that the Administration was ready to meet with the defendant Lewis "to discuss matters affecting the operation of the bituminous coal mines under the Krug-Lewis agreement, and for that purpose, with the above reservations, any date for such discussions is agreeable to this Administration."

17. On the same day, the defendant Lewis addressed a further letter to the Secretary of the Interior (a copy of which is annexed

hereto, marked "Exhibit 6," and made a part hereof), in which he reiterated his position and asserted that failure of the Secretary of the Interior to accede to his request would void the Krug-Lewis agreement.

9 18. On October 27, 1946, the Secretary of the Interior addressed a telegram to the defendant Lewis (a copy of which is annexed hereto, marked "Exhibit H," and made a part hereof), requesting the defendant Lewis and (or) his representatives to meet with the Coal Mines Administrator and his associates on November 1 or any other date agreeable to the defendant Lewis.

19. In reply to the said telegram of October 27, 1946, the defendant Lewis, by a telegram of October 28, 1946, to the Secretary of the Interior (a copy of which is annexed hereto, marked Exhibit I, and made a part hereof), advised the Secretary of the Interior "that representatives, United Mine Workers, will meet with Coal Mines Administrator Collison and his associates at 11:00 a. m. on Friday, Nov. 1. Under these conditions, Krug-Lewis agreement remains effective and unchanged during ensuing period of negotiations."

20. On November 1, 1946, a conference was held in Washington, D. C., attended by representatives of the Secretary of the Interior and of the defendant Union, and that conference was thereafter continued from time to time, from November 1 to and including November 14, 1946, all without prejudice to the contentions of the respective parties regarding the defendants' right, by unilateral notice, to terminate the Krug-Lewis agreement. During the course of the meeting, on November 11, 1946, attended by the defendant Lewis and the Secretary of the Interior, among others, the representatives of the defendant Union for the first time advanced specific proposals for changes in the wages and other terms and conditions of employment in effect at the bituminous coal mines in the Government's possession, which proposals included changes of a fundamental and far-reaching nature.

10 21. On November 14, 1946, the Secretary of the Interior addressed a letter to the defendant Lewis (a copy of which is annexed hereto, marked "Exhibit J," and made a part hereof), in which he stated in part the following:

"The Coal Mines Administration, as you know, has consistently taken the position that the Krug-Lewis agreement, except as it may be modified by mutual consent or by petition under Section 5 of the War Labor Disputes Act, covers the period of Government possession. I have been informally advised by the Attorney General of the United States that this interpretation of the contract is correct."

22. On November 15, 1946, the Attorney General of the United States confirmed by a formal letter opinion to the Secretary of the Interior (a copy of which is annexed hereto, marked Exhibit K, and made a part hereof) the view above expressed and stated that Section 15 of the National Bituminous Coal Wage Agreement dated April 11, 1945, had not been carried forward in the Krug-Lewis agreement, and, accordingly was no longer in force.

23. On the same day the defendant Lewis sent a letter to the Secretary of the Interior (a copy of which is annexed hereto, marked "Exhibit L," and made a part hereof), which reads as follows:

"In accordance with the provisions of the Krug-Lewis Agreement dated May 29, 1946, the United Mine Workers of America, on October 21, 1946, officially requested a joint conference of the accredited repre-

sentatives for the joint contracting parties to said agreement. Such conference convened on November 1, 1946.

"Fifteen days having now elapsed since the beginning of said conference, the United Mine Workers of America, exercising its option, hereby terminates said Krug-Lewis Agreement as of 12 o'clock P. M. midnight Wednesday, November 20, 1946."

24. On the same day, November 15, 1946, the Secretary of the Interior addressed a letter to the defendant Lewis (a copy of which is annexed hereto, marked Exhibit M, and made a part hereof), in which the Secretary of the Interior advised the defendant Lewis "that you have no power under the Krug-Lewis agreement of May 29 or under the law, by unilateral declaration, to terminate the contract which by its terms 'covers for the period of Government possession the terms and conditions of employment.'"

11 25. Defendants have persisted, are now persisting, and, on information and belief, will continue to persist in their contention that the Krug-Lewis agreement carries forward the provisions of Section 15 of the National Bituminous Coal Agreement, dated April 11, 1945, and that, accordingly, by virtue of those provisions, they have the right to terminate the Krug-Lewis agreement by unilateral notice. On the other hand, the United States of America has at all times contended and now contends that defendants do not have the right, by unilateral notice, to terminate the Krug-Lewis agreement.

26. The rights, status, and other legal relations of the United States of America and the Secretary of the Interior in connection with the possession, control and operation of the coal mines have been and are affected and brought in question by the action and threatened action of defendants. A genuine and substantial controversy and issue exists and is in dispute between plaintiff and defendants. It is necessary for the preservation of plaintiff's rights and for the protection of the public interest that this Court determine whether defendants have the right to terminate the Krug-Lewis agreement by unilateral notice.

27. The aforesaid action of defendants, in purporting to terminate the Krug-Lewis agreement on November 20, 1946, constitutes a breach of the obligations assumed by defendants under the Krug-Lewis agreement for the period of Government possession.

28. On information and belief: It has been a long established policy of the defendants that the members of the Union should work

12 at the mines only while there is in effect a contract, to which the defendant Union is a party, which establishes the terms and conditions of employment in such mines. In accordance with that policy and the repeated declarations of the defendant Lewis and other officers of the defendant Union, the members of the Union, who constitute the great majority of the mine workers in the bituminous coal fields, have consistently refused to work in such mines in the absence of such an effective contract; and further, in accordance with that long established policy and pursuant to such repeated declarations, the members of the Union, upon the mere announcement by the defendant Lewis that an existing contract has been voided or terminated or that no contract exists, have in concert ceased to work at such mines and have continued to stay out of the mines until the defendant Lewis has announced that a contract again exists.

29. On information and belief: As a consequence of the foregoing, the aforesaid notice given by the defendant Lewis, purporting to

terminate the Krug-Lewis agreement, constitutes in substance and in effect a call for a strike of the bituminous coal mine workers who are members of the defendant Union to commence at midnight on November 20, 1946.

30. The aforesaid notice given by the defendant Lewis purporting to terminate the Krug-Lewis agreement is accordingly unlawful, in that, on information and belief, defendants thereby coerce, instigate, induce, and encourage the mine workers employed in the bituminous coal mines in Government possession to interfere by strike, slowdown, and other interruption with the operation of those mines; and, further, in that defendants thereby interfere with the sovereign functions of the United States of America exercised for the general welfare and in order to insure the operation of the mines in the interests of the war effort and to preserve the national economic structure in the present emergency.

13 31. The threatened concerted work stoppage at the bituminous coal mines in the Government's possession would constitute an irreparable injury to the interests of the people of the United States of America. The continued maximum production of bituminous coal in the mines of the nation is vital to the maintenance and preservation of the national economy. Coal is a commodity of such character that it cannot easily be stored in adequate quantities, and the stocks of bituminous coal available in the nation today are sufficient only to meet the requirements of the economy for a brief period. A stoppage of production at this time would, therefore, constitute an immediate menace to the health, safety and welfare of the people of the United States; would compel a slow-down and eventual stoppage of the nation's industrial machine, and transportation and public utilities system; and would seriously interfere with the successful completion of the war effort of the United States and with the reconversion of the economy from a wartime to a peacetime basis.

32. The various acts and things which defendants have done and have threatened to do, as aforesaid, have interfered with and will, except for the intervention of this Court, interfere with the effective discharge of vital Governmental functions; will frustrate the powers conferred by the Constitution and by acts of Congress upon the Executive to terminate by Government seizure, interruptions consequent upon labor disturbances in vital war industry; and are unlawful and will cause irreparable injury to plaintiff for which it has no adequate remedy at law.

WHEREFORE, plaintiff, the United States of America, prays:

That plaintiff have a judgment and decree of this Court declaring its rights and status, and more particularly adjudicating:

(a) That neither the defendants nor any of them had or has the right, authority, or power to issue or give any notice
14 purporting to terminate the Krug-Lewis agreement;

(b) That neither the defendants nor any of them had or has the right, authority, or power, by unilateral notice, to terminate the Krug-Lewis agreement at any time during the period of Government possession of the bituminous coal mines, or by any other unilateral action to render the provisions of that agreement nugatory or void;

(c) That the issuance of any notice by defendants, or any of them, to the effect that the Krug-Lewis agreement is terminated

or terminable by them, or any of them, or a declaration by defendants or any of them that there is no contract in effect at the bituminous coal mines is unlawful and that any such declaration by the defendants or any of them is void and of no force and effect.

2. That this Court, pending the final determination of this cause, issue a preliminary injunction restraining and enjoining defendants, and each of them, and their agents, servants, employees and attorneys, and all persons in active concert or participation with them, from:

(a) Issuing or otherwise giving publicity to any notice, except with the consent of the Secretary of the Interior or the Coal Mines Administrator, or upon order of the National Wage Stabilization Board, that, or to the effect that, the Krug-Lewis agreement has been, is, or will at some future date be terminated, or that said agreement is or at some future date will be non-existent, nugatory, or void at any time during the period of Government possession;

(b) Permitting to remain outstanding the notice heretofore given by the defendant John L. Lewis to the Secretary of the Interior, dated November 15, 1946;

(c) Breaching their obligations under the Krug-Lewis agreement by permitting to remain outstanding the notice heretofore given by the defendant John L. Lewis to the Secretary of the Interior, dated November 15, 1946, or by issuing any such notice as referred to in paragraph 2 (a) of this prayer;

(d) Coercing, instigating, inducing, or encouraging the mine workers at the bituminous coal mines in the Government's possession, or any of them, or any person, to interfere by strike, slowdown, walk-out, cessation of work, or otherwise, with the operation of said mines by permitting to remain outstanding the notice heretofore given by the defendant John L. Lewis to the Secretary of the Interior, dated November 15, 1946, or by issuing any such notice of termination as referred to in paragraph 2 (a) of this prayer, or through any other means or device;

(e) Interfering with or obstructing the exercise by the Secretary of the Interior, on behalf of the United States, of his functions under Executive Order 9728 by permitting to remain outstanding the notice heretofore given by the defendant John L. Lewis to the Secretary of the Interior, dated November 15, 1946, or by issuing any such notice of termination as referred to in paragraph 2 (a) of this prayer, or by any other means or device;

(f) Taking any action which would impair, obstruct, or render fruitless the determination of this controversy by this Court.

3. That, pending the issuance of the aforesaid preliminary injunction, this Court issue forthwith a temporary restraining order restraining and enjoining the defendants and their officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them in the manner or form aforesaid.

4. That this Court grant plaintiff such other and further relief as may be just and proper.

TOM C. CLARK,
Attorney General.

By JOHN F. SONNETT,
JOHN F. SONNETT,
Assistant Attorney General.

17 *Verification*

CITY OF WASHINGTON,
District of Columbia, ss:

J. A. KRUG, Secretary of the Interior, United States of America, being first duly sworn, says that he has read the foregoing complaint of the United States of America and knows the contents thereof and that the same is true of his own knowledge, except as to the matters which are therein stated to be on information and belief and as to these matters he believes them to be true.

J. A. KRUG.

Subscribed and sworn to before me this 17th day of November 1946. My commission expires on the 1st day of Dec. 1950.

MARY M. BEPEITI,
Notary Public in and for the District of Columbia.

18 *Exhibit A* 37764

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

19 EXECUTIVE ORDER NO. 9728

AUTHORIZING THE SECRETARY OF THE INTERIOR TO TAKE POSSESSION OF AND TO OPERATE CERTAIN COAL MINES

WHEREAS after investigation I find and proclaim that there are interruptions or threatened interruptions in the operation of the mines producing bituminous coal as a result of existing or threatened strikes and other labor disturbances; that the coal produced by such mines is required for the war effort and is indispensable for the continued operation of the national economy during the transition from war to peace; that the war effort will be unduly impeded or delayed by such interruptions; and that the exercise, as hereinafter specified, of the powers vested in me is necessary to insure the operation of such mines in the interest of the war effort and to preserve the national economic structure in the present emergency:

NOW, THEREFORE, by virtue of the power and authority vested in me by the Constitution and laws of the United States, including Section 9 of the Selective Training and Service Act of 1940 (54 Stat. 892), as amended by the War Labor Disputes Act (57 Stat. 163), as President of the United States and Commander in Chief of the Army and Navy of the United States, it is hereby ordered as follows:

1. The Secretary of the Interior is authorized and directed to take possession of any and all such mines, and, to the extent that he may deem necessary, of any real or personal property, franchises, rights, facilities, funds, and other assets used in connection with the operation of such mines; to operate or to arrange for the operation of such mines in such manner as he may deem necessary in the interest of the war effort; and to do all things necessary for, or incidental to, the production, sale, and distribution of the coal produced, prepared, or handled by the said mines.

2. The Secretary of the Interior shall operate the said mines in accordance with such terms and conditions of employment as are in effect at the time possession thereof is taken, subject to the provisions of Section 5 of the War Labor Disputes Act.

3. Subject to the national wage and price stabilization policies as determined by the National Wage Stabilization Board and the Economic Stabilization Director, the Secretary of the Interior is authorized, pursuant to the provisions of Section 5 of the War Labor Disputes Act, following such negotiations as he may deem necessary with the duly constituted representatives of the employees, to apply to the National Wage Stabilization Board for appropriate changes in the terms and conditions of employment for the period of the operation of the mines by the Government.

4. In carrying out this order, the Secretary of the Interior shall act through or with the aid of such public or private instrumentalities or persons as he may designate. All Federal agencies are directed to cooperate with the Secretary of the Interior to the fullest extent possible in carrying out the purposes of this order.

20 5. The Secretary of the Interior shall make employment available and provide protection to all employees working at such mines and to all persons seeking employment so far as they may be needed; and upon the request of the Secretary of the Interior, the Secretary of War shall take such action, if any, as he may deem necessary or desirable to provide protection to all such persons and mines.

6. The Secretary of the Interior shall permit the managements of the mines taken under the provisions of this order to continue with their managerial functions to the maximum degree possible consistent with the aims of this order.

7. The Secretary of the Interior is authorized and directed to maintain customary working conditions in the mines and customary procedure for the adjustment of workers' grievances. He shall recognize the right of the workers to continue their membership in any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, provided that such concerted activities do not interfere with the operations of the mines.

8. Possession of any mine or mines taken under this order shall be terminated by the Secretary of the Interior as soon as practicable, but in no event more than sixty days after the restoration of the productive efficiency of any such mine or mines prevailing prior to the taking of possession thereof.

HARRY S. TRUMAN.

THE WHITE HOUSE, *May 21, 1946.*

131894

21 *Exhibit B* 37764

KRUG LEWIS AGREEMENT, 29 MAY 1946

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

22 AGREEMENT

This agreement between the Secretary of the Interior, acting as Coal Mines Administrator under the authority of Executive Order No. 9728 (dated May 21, 1946, 11 F. R. 5593), and the United Mine Workers of America, covers for the period of Government possession the terms and conditions of employment in respect to all mines in Gov-

ernment possession which were as of March 31, 1946, subject to the National Bituminous Coal Wage Agreement, dated April 11, 1945.

1. *Provisions of National Bituminous Coal Wage Agreement Preserved*

Except as amended and supplemented herein, this agreement carries forward and preserves the terms and conditions contained in all joint wage agreements effective April 1, 1941 through March 31, 1943, the supplemental agreement providing for the six (6) day work week, and all the various district agreements executed between the United Mine Workers and the various Coal Associations and Coal Companies (based upon the aforesaid basic agreement) as they existed on March 31, 1943, and the National Bituminous Coal Wage Agreement, dated April 11, 1945.

2. *Mine Safety Program*

(a) *Federal Mine Safety Code.*

As soon as practicable and not later than 30 days from the date of the making of the agreement, the Director of the Bureau of Mines after consultation with representatives of the United Mine Workers and such other persons as he deems appropriate, will issue a reasonable code of standards and rules pertaining to safety conditions and practices in the mines. The Coal Mines Administrator will put this code into effect at the mines. Inspectors of the Federal Bureau of Mines shall make periodic investigations of the mines and report to the Coal Mines Administrator any violations of the Federal Safety Code. In cases of violation the Coal Mines Administrator will take appropriate action which may include disciplining or replacing the operating manager so that with all reasonable dispatch said violation will be corrected.

23

From time to time the Director of the Bureau of Mines may, upon request of the Coal Mines Administrator or the United Mine Workers, review and revise the Federal Mine Safety Code.

(b) *Mine Safety Committee.*

At each mine there shall be a Mine Safety Committee selected by the Local Union. The Mine Safety Committee may inspect any mine development or equipment used in producing coal for the purpose of ascertaining whether compliance with the Federal Safety Code exists. The Committee members while engaged in the performance of their duties shall be paid by the Union, but shall be deemed to be acting within the scope of their employment in the mine within the meaning of the Workmen's Compensation Law of the state where such duties are performed.

If the Committee believes conditions found endanger the life and bodies of the mine workers, it shall report its findings and recommendations to the management. In those special instances where the Committee believes an immediate danger exists and the Committee recommends that the management remove all mine workers from the unsafe area, the operating manager or his managerial subordinate is required to follow the recommendation of the Committee, unless and until the Coal Mines Administrator, taking into account the inherently hazardous character of coal mining, determines that the authority of the Safety Committee is being misused and he cancels or modifies that authority.

The Safety Committee and the operating manager shall maintain such records concerning inspections, findings, recommendations and actions relating to this provision of the agreement as the Coal Mines Administrator may require and shall supply such reports as he may request.

24 3. *Workmen's Compensation and Occupational Disease.*

The Coal Mines Administrator undertakes to direct each operating manager to provide its employees with the protection and coverage of the benefits under Workmen's Compensation and Occupational Disease Laws, whether compulsory or elective, existing in the states in which the respective employees are employed. Refusal of any operating manager to carry out this direction shall be deemed a violation of his duties as operating manager. In the event of such refusal the Coal Mines Administrator will take appropriate action which may include disciplining or replacing the operating manager or shutting down the mine.

4. *Health and Welfare Program*

There is hereby provided a health and welfare program in broad outline—and it is recognized that many important details remain to be filled in—such program to consist of three parts, as follows:

(a) *A Welfare and Retirement Fund.*

A welfare and retirement fund is hereby created and there shall be paid into said fund by the operating managers 5¢ per ton on each ton of coal produced for use or for sale. This fund shall be managed by three trustees, one appointed by the Coal Mines Administrator, one appointed by the President of the United Mine Workers, and the third chosen by the other two. The fund shall be used for making payments to miners, and their dependents and survivors, with respect to (i) wage loss not otherwise compensated at all or adequately under the provisions of Federal or State law and resulting from sickness (temporary disability), permanent disability, death, or retirement, and (ii) other related welfare purposes, as determined by the trustees. Subject to the stated purposes of the fund, the trustees shall have full authority with respect to questions of coverage and eligibility,
25 priorities among classes of benefits, amounts of benefits, methods of providing or arranging for provision of benefits, and all related matters.

The Coal Mines Administrator will instruct the operating managers that the obligation to make payments to the welfare and retirement fund becomes effective with reference to coal produced on and after June 1, 1946; the first actual payment is to be made on August 15, 1946, covering the period from June 1 to July 15; the second payment to be made on September 15, covering the period from July 15 to August 31; and thereafter payments are to be made on the 15th day of each month covering the preceding month.

(b) *A Medical and Hospital Fund.*

There shall be created a medical and hospital fund, to be administered by trustees appointed by the President of the United Mine Workers. This fund shall be accumulated from the wage deductions presently being made and such as may hereafter be authorized by the Union and its members for medical, hospital, and related purposes. The trustees shall administer this fund to provide, or to arrange for

the availability of, medical, hospital, and related services for the miners and their dependents. The money in this fund shall be used for the indicated purposes at the discretion of the trustees of the fund; and the trustees shall provide for such regional or local variations and adjustments in wage deductions, benefits and other practices, and transfer of funds to local unions, as may be necessary and as are in accordance with agreements made within the framework of the Union's organization.

The Coal Mines Administrator agrees (after the trustees make arrangements satisfactory to the Coal Mines Administrator) to direct each operating manager to turn over to this fund, or to such local unions as the trustees of the fund may direct, all such wage deductions, beginning with a stated date to be agreed upon by the Administrator and the President of the United Mine Workers:
26 Provided, however, that the United Mine Workers shall first obtain the consent of the affected employees to such turn-over. The Coal Mines Administrator will cooperate fully with the United Mine Workers to the end that there may be terminated as rapidly as may be practicable any existing agreements that earmark the expenditure of such wage deductions, except as the continuation of such agreements may be approved by the trustees of the fund.

Present practices with respect to wage deductions and their use for provision of medical, hospital and related services shall continue until such date or dates as may be agreed upon by the Coal Mines Administrator and the President of the United Mine Workers.

(c) *Coordination of the Welfare and Retirement Fund and the Medical and Hospital Fund.*

The Coal Mines Administrator and the United Mine Workers agree to use their good offices to assure that trustees of the two funds described above will cooperate in and coordinate the development of policies and working agreements necessary for the effective operation of each fund toward achieving the result that each fund will, to the maximum degree practicable, operate to complement the other.

5. *Survey of Medical and Sanitary Facilities*

The Coal Mines Administrator undertakes to have made a comprehensive survey and study of the hospital and medical facilities, medical treatment, sanitary and housing conditions in the coal mining areas. The purpose of this survey will be to determine the character and scope of improvements which should be made to provide the mine workers of the Nation with medical, housing and sanitary facilities conforming to recognized American standards.

6. *Wages*

(a) All mine workers, whether employed by the day, tonnage or footage rate, shall receive $1.85 per day in addition to that provided for in the contract which expired March 31, 1946.
27 (b) Work performed on the sixth consecutive day is optional, but when performed shall be paid for at time and one-half or rate and one-half.

(c) Holidays, when worked, shall be paid for at time and one-half or rate and one-half. Holidays shall be computed in arriving at the sixth and seventh day in the week.

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7. Vacation Payment

An annual vacation period shall be the rule of the industry. From Saturday, June 29, 1946, to Monday, July 8, 1946, inclusive, shall be a vacation period during which coal production shall cease. Day-men required to work during this period at coke plants and other necessarily continuous operations or on emergency or repair work shall have vacations of the same duration at other agreed periods.

All employees with a record of one year's standing (June 1, 1945, to May 31, 1946) shall receive as compensation for the above-mentioned vacation period the sum of One Hundred Dollars ($100), with the following exception: Employees who entered the armed services and those who returned from the armed services to their jobs during the qualifying period shall receive the $100 vacation payment.

All the terms and provisions of district agreements relating to vacation pay for sick and injured employees are carried forward to this agreement and payments are to be made in the sum as provided herein.

Pro rata payments for the months they ~~are on~~ the payroll shall be provided for those mine workers who are given employment during the qualifying period and those who leave their employment.

28 The vacation payment of the 1946 period shall be made on the last pay day occurring in the month of June of that year.

8. Settlement of Disputes

Upon petition filed by the United Mine Workers with the Coal Mines Administrator showing that the procedure for the adjustment of grievances in any coal-producing district is inequitable in relation to the generally prevailing standard of such procedures in the industry, the Coal Mines Administrator will direct the operating managers at mines in the district shown to have an inequitable grievance procedure to put into effect within a reasonable period of time the generally prevailing grievance procedure in the industry.

9. Discharge Cases

The Coal Mines Administrator will carry out the provision in agreements which were in effect on March 31, 1946, between coal mine operators and the United Mine Workers that cases involving the discharge of employees for cause shall be disposed of within 5 days.

10. Fines and Penalties

No fines or penalties shall be imposed unless authorized by the Coal Mines Administrator. In the event that such fines or penalties are imposed by the Coal Mines Administrator, the fund withheld for that reason shall be turned over to the trustees of the fund provided for in Section 4 (b) hereof, to be used for the purpose stated therein.

11. Supervisors

With respect to questions affecting the employment and bargaining status of foremen, supervisors, technical and clerical workers employed in the bituminous mining industry, the Coal Mines Administrator will be guided by the decisions and procedure laid down by the National Labor Relations Board.

29 *12. Safety*

Nothing herein shall operate to nullify existing state statutes, but this agreement is intended to supplement the aforesaid statutes in the interest of increased mine safety.

13. Retroactive Wage Provisions

The wage provisions of this agreement shall be retroactive to May 22, 1946.

14. Effective Date

This agreement is effective as of May 29, 1946, subject to approval of appropriate Government agencies.

Signed at Washington, D. C. on this 29th day of May 1946.

(Sgd.) J. A. KRUG,
Coal Mines Administrator.
(Sgd.) JOHN L. LEWIS,
President, United Mine Workers of America.

132178

30 *Exhibit C* 37764

NATIONAL BITUMINOUS COAL WAGE AGREEMENT

Effective April 1, 1945

Executed in the City of Washington, D. C., April 11, 1945

Filed November 18, 1946. Charles E. Stewart, Clerk.

31 THIS AGREEMENT, made this 11th day of April 1945, between the Coal Operators and Associations signatory hereto, represented in the National Bituminous Coal Wage Conference, parties of the first part, and the United Mine Workers of America, parties of the second part, covering all of the bituminous coal mines of the United States represented in said Conference, amends and supplements all agreements as herein provided. This Agreement carries forward and preserves the terms and conditions contained in all Joint Wage Agreements effective April 1, 1941, to March 31, 1943, the Supplemental Agreement providing for the Six-Day Work Week, and all of the various District Agreements executed between the United Mine Workers of America and the various Coal Associations and Coal Companies (based upon the aforesaid basic agreement) as they existed on March 31, 1943, and as amended and supplemented by the Agreement herein set out.

Witnesseth:

1. (a). For all inside employees a work day of nine hours from portal to portal is established, including a staggered fifteen minutes for lunch, and without any intermission or suspension of operations throughout the day. Of these nine hours, seven hours shall be paid for at straight rate, the eighth hour shall be paid for at time and one-half, and the ninth hour shall be paid for at a flat rate of $1.50 ($1.00 at time and a half) for each inside day worker. Tonnage, yardage, dead work, or footage workers shall be paid full earnings predicated upon the basic tonnage, yardage, dead work, and footage rates that existed on March 31, 1943. As payment for travel and overtime beyond seven hours per day, there shall be added to the tonnage worker's earnings one-ninth of his daily earnings. On his

sixth consecutive day of work in any week there shall be added to the tonnage worker's earnings for that day one-ninth of such earnings.

32 (b) For all outside employees (including all strip mine and coke-oven employees) a work day of eight hours and fifteen minutes is established, including a staggered fifteen minutes for lunch, and without any intermission or suspension of operations throughout the day. For these eight hours and fifteen minutes each outside employee shall be paid the same amount per day as he is now receiving and which is based upon seven hours of straight time and one hour and fifteen minutes at time and one-half. In addition thereto each outside employee shall receive $1.07 per day to equalize earnings of the outside employee with earnings of the inside employee.

(c) For outside employees whose normal work day heretofore has been eight hours, a work day of eight hours and thirty-five minutes is established, including a staggered fifteen minutes for lunch, for which they shall receive the same pay they are now receiving plus a flat $1.07 per day to equalize earnings of the outside employees with earnings of the inside employees.

(d) The application of rates covered by subdivisions (a), (b), and (c) of this paragraph for time worked less than seven hours or in excess of nine hours are shown in the Appendix attached hereto and made a part hereof.

Exception: When break-down of equipment, accidents, shortage of transportation from the mine, or other causes beyond the control of the management prevent; provided, however, that lack of marked demand is not to permit the management to operate on less than a nine-hour shift for inside employees and on less than an eight and one-quarter hour shift for outside employees.

Exception: Overtime shall not be pyramided and time and one-half shall not be paid where the regular rotation of shifts requires the working of more than one shift in any consecutive twenty-four hour period.

33 2. For all inside employees, work time shall begin at the portal and end at portal; but in shaft mines, for the purpose of making the operations of lowering and hoisting men orderly and safe, the man-trips shall leave the bottom ten minutes after the start of each nine-hour shift and shall arrive at the shaft bottom five minutes before the end of each nine-hour shift. Employees shall be at the shaft collar in time for all of them to be lowered so as to be in the man-trip at the scheduled departure time. The Operator shall have the right to designate the portal or portals and may move or establish new portals if adequate facilities, conveniences, and safety are furnished the mine workers at such new portals, subject to the right of review on the part of the mine workers under existing grievance machinery.

3. Time and one-half or rate and one-half shall not be paid for Saturday work if the individual mine worker has not worked on Monday, Tuesday, Wednesday, Thursday, or Friday of the week.

4. (a) Employees scheduled for and starting work on the second shift, whether paid by the day or by the ton, shall be paid four cents additional for each hour employed. (Example: For nine hours, portal to portal, the increased pay hereunder shall be thirty-six cents.)

(b) Employees scheduled for and starting work on the third shift, whether paid by the day or by the ton, shall be paid six cents additional

for each hour employed. (Example: For nine hours, portal to portal, the increased pay hereunder shall be fifty-four cents.)

(c) The hoisting of coal shall be permitted on each shift.

5. Classification of mobile loading machine rates in all agreements shall be changed to provide the following: Drillers and Shooters, not less than a day rate of $8.00 and an hourly rate of $1.143, except that where the basic inside day rate is less than $7.00, the rate for Drillers and Shooters on mobile loading machine units shall be increased 14.3%. Loading machine operators' helpers shall be paid not less than the Drillers and Shooters rate in any district.

6. The general day labor classifications inside shall be amended to provide as follows:

The rate for inside electricians or mechanics repairing loading and cutting machines, haulage locomotives and conveyors, shall be not less than $9.00 per day, or $1.286 per hour, except that where the base rate for electricians or mechanics in any district is less than $7.80, the base rate shall be increased 15.4%.

The rate for inside electrician or mechanic apprentices or helpers, including wiremen, bonders, oilers, telephone men, and storage-battery chargers, shall be not less than the basic inside day rate in any district.

The work performed by an electrician or mechanic apprentice or helper included in the inside day wage scale shall in no case carry the rate applicable to regular electricians or mechanics except in the case where there is a vacancy in such positions and the work actually performed is that of the regular electrician or mechanic.

7. Slate pickers shall receive the basic outside rate per day and per hour.

8. For each mine where the practice now prevails, the delivery of cars to the working places in the mines by pushing will be the subject of local negotiations and will not be prohibited where it is impracticable to deliver them to the working place otherwise than by pushing. Any controversy as to the continuation of the practice where it now prevails must be considered as a dispute, and shall be settled promptly in accordance with the customary grievance machinery.

9. All employees at mines which produce coal six days per week shall be given a fair and equal opportunity to work on each of such six days. Laying off individual mine workers during the week for the purpose of denying them six days' work is prohibited. Work performed on the seventh consecutive day is optional, but when performed shall be paid for at double rates.

10. The management shall furnish all necessary mine workers' tools. Safety equipment and devices, including electric cap lamps, and also carbide lamps, shall be furnished by the management without charge. This shall not include, however, personal wearing apparel such as hats, clothing, shoes, and goggles. In lieu of furnishing carbide lamps and carbide, the Operator may, at his option, pay to the mine workers who use carbide lamps at their work six cents per day, and the mine worker shall continue to furnish their own carbide lamps and carbide.

No charge shall be made for blacksmithing.

11. Any grievances or disputes as to the starting time shall be handled in accordance with the established practices for the adjustment of such grievances.

12. The provisions relating to vacations with pay are hereby amended to substitute, at the appropriate places therein, Seventy-five ($75.00) Dollars for Fifty ($50.00) Dollars.

In the interest of the national war effort, it is agreed that the vacation period shall be eliminated for the year 1945 without prejudice or modification in the existing vacation clause of the Agreement. This arrangement shall in nowise affect the payment of Seventy-five ($75.00) Dollars to be paid by all Operators to each individual in conformity with the terms of the Agreement.

The above payment to individual mine workers entitled to vacation shall be made at the option of the employing Operator, except that in all cases full payment of the amount prescribed shall be made not later than the last pay day occurring in the month of June 1945.

The vacation payment of the 1946 period shall be made on the last pay day occurring in the month of June of that year.

36 13. If the United Mine Workers make a wage agreement during the period of this Agreement, covering wages or working conditions with any person, corporation, association, or district, more favorable to the Operators than as contained herein, then this Agreement shall be modified so that the Operators who are parties hereto shall receive all of the benefits of such more favorable agreement.

For the duration of this Agreement no strikes shall be called or maintained hereunder.

14. The Operators agree that they will not lease any operating mines subject to this Agreement as a subterfuge for the purpose of avoiding the provisions of this Agreement.

15. This Agreement, dated this 11th day of April 1945, shall be effective as of April 1, 1945, and shall continue in effect hereafter subject to the conditions and termination as herein provided. At any time prior to April 1, 1946, in the event a significant change occurs in the government wage policy, either party shall have the right to request negotiations on general wage rates.

At any time after March 1, 1946, either party may give ten days' notice in writing of a desire for a negotiating conference upon the matters outlined in said notice. The other party agrees to attend said conference. At the end of fifteen days after the beginning of such negotiating conference either party may give to the other a notice in writing of the termination of this Agreement, to be effective five days after the receipt of such notice.

Service of the above notice for a negotiating conference or termination of this Agreement by the Operators shall be only upon the request of a majority of the tonnage represented in this conference as disclosed by the records of the present joint conference. For the purpose of maintaining an organization, the Operators' Negotiating Committee as set up in this joint conference shall continue in existence during the life of the Agreement. Service upon the Operators' Nego-

37 tiating Committee or by it shall constitute proper notice.

At any time after March 1, 1947, one or more of the five Operator Groups, as designated by the records of the present conference, may serve notice in writing for a negotiating conference and thereafter for termination of this Agreement.

16. This Agreement is an integrated instrument, and its respective provisions are interdependent and shall be effective from and after

April 1, 1945, subject to the approval hereof by the appropriate governmental agencies and the granting by the Office of Price Administration of advances in maximum prices to cover the increased costs occasioned hereby.

17. It is agreed that any conference or conferences held under the terms of paragraph 15 shall be convened at Washington, D. C., unless such place of meeting is changed by mutual agreement of the parties.

Signed this 11th day of April 1945 at Washington, D. C.

NATIONAL BITUMINOUS COAL WAGE CONFERENCE,
EZRA VAN HORN, *Chairman.*

John T. Jones, Secretary.

Joseph J. Ardigo, Assistant Secretary.

United Mine Workers of America:
John L. Lewis, President.
John O'Leary, Vice President.
Thomas Kennedy, Secretary-Treasurer.
Negotiating Committee:
John Owens,
Hugh White,
Sam Caddy,
Welly K. Hopkins, General Counsel.

Operators' Negotiating Committee:
Charles O'Neill,
Harvey Cartwright (Alternate),
Eugene McAuliffe (Alternate),
Edward R. Burke,
Hubert E. Howard,
Harry M. Moses,
George F. Campbell,
Kenneth A. Spencer.

(Approved by the War Labor Board on April 23, 1945.)

38 APPENDIX

1. Referring to 1 (a), the inside day worker shall be paid his straight productive rate from portal to portal for seven hours or less time per day. If his time from portal to portal is less than nine hours but more than seven, he shall be paid his straight productive rate for the first seven hours and time and one-half at his productive rate for the hours over seven. When his time from portal to portal is nine hours, he shall receive seven hours at his straight productive rate, one hour at time and one-half, and the ninth hour at a flat $1.50.

2. Referring to 1 (b), to arrive at the straight-time rate per hour for outside men whose hours of work are eight hours and fifteen minutes, it shall be computed as follows: Add to his present wages for eight hours and fifteen minutes $1.07; divide this sum by 8.875. For the sixth consecutive day this divisor shall be 12.375.

3. Referring to 1 (c), to arrive at the straight-time rate per hour for outside men whose hours of work are eight hours and thirty-five minutes, it shall be computed as follows: Add to his present wages for eight hours and thirty-five minutes $1.07; divide this sum by 8.875. For the sixth consecutive day this divisor shall be 12.87.

39 *Exhibit D* 37764

ORDER OF NATIONAL WAGE STABILIZATION BOARD, MAY 31, 1946

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

40 UNITED STATES OF AMERICA

NATIONAL WAGE STABILIZATION BOARD

An Application filed by the Secretary of the Interior, Acting under authority of Executive Order #9728, 11 F. R. 5593, and Section 5 of the War Labor Disputes Act

In the Matter of Mines Producing Bituminous Coal, which were, as of March 31, 1946, subject to the National Bituminous Coal Wage Agreement, dated April 11, 1945

ORDER

On May 29, 1946, the Secretary of the Interior, acting pursuant to the authority of Executive Order #9728, May 21, 1946, and Section 5 of the War Labor Disputes Act, filed an application for a change in wages and other terms and conditions of employment in mines producing bituminous coal which were, as of March 31, 1946, subject to the National Bituminous Coal Wage Agreement, dated April 11, 1945, and which were then in the possession of the Secretary of the Interior.

Pursuant to the Stabilization Act of 1942, as amended, Executive Order #9250, of October 3, 1942; Executive Order #9672, of December 31, 1945; and Executive Order #9697, of February 14, 1946, and Section 5 of the War Labor Disputes Act, the National Wage Stabilization Board, having made such investigations as it deemed necessary and desirable in the premises, hereby orders the following changes in wages and other terms and conditions, which it deems to be fair and reasonable and not in conflict with any Act of Congress or Executive Order issued thereunder:

1. That a Mine Safety Program be established in accordance with the provisions of Section 2 of the Agreement entered into on May 29, 1946, between the Secretary of the Interior, acting as Coal Administrator under the authority of Executive Order #9728
41 (dated May 21, 1946, 11 F. R. 5593), and the United Mine Workers of America (herein called "the Agreement"), and which is attached and made a part hereof;

2. That the employees be provided with the protection and coverage of the benefits under Workmen's Compensation and Occupational Disease Laws in accordance with the provisions of Section 3 of the Agreement;

3. That a Health and Welfare Program be established in accordance with the provisions of Section 4 (a) of the Agreement;

4. That the wages of all mine workers be increased in accordance with the provisions of Section 6 (a) of the Agreement. It is the understanding of the Board, and such understanding is a condition of this Order, that said Section 6 (a) of that Agreement contemplates and will be administered to provide, where less than a full day is worked, for payment for the hours worked at the applicable rate for those hours, it being further understood that, except as inconsistent with the Agreement, existing wage practices will remain in effect.

5. That there shall be put into effect the provisions of Section 6 (b) of the Agreement covering payment for work performed on the sixth consecutive day;

6. That there shall be put into effect the provisions covering recognition of holidays as set out in Section 6 (c) of the Agreement. It is the understanding of the Board, and such understanding is a condition of this Order, that "holidays" as used in said Section 6 (c) refers to those holidays heretofore recognized in various District Agreements executed between the United Mine Workers of America and the various coal associations and coal companies, and that this section will be applied, with respect to the employees of the various coal mines, depending upon which holidays were recognized in the applicable District Agreement;

42 7. That vacation payments be made to all employees in accordance with the provisions of Section 7 of the Agreement. It is the understanding of the Board, and such understanding is a condition of this Order;

(a) That the provision in the second sentence of said Section 7 is in recognition of the previous contract practice in this industry and leaves it optional with the parties whether the mines are to operate during the vacation period;

(b) That the provision in the fifth paragraph of Section 7 of said Agreement will be the basis for interpretive rules governing the making of pro rata vacation payments in specific situations, and that these rules will be submitted to the National Wage Stabilization Board for such further consideration and action as may be appropriate under Section 5 of the War Labor Disputes Act.

8. That the Secretary of the Interior, acting as the Coal Mines Administrator, shall have the authority provided for by Section 8 of the Agreement to put into effect generally prevailing grievance procedure where such procedure has not theretofore been in effect;

9. That fines and penalties shall be imposed in a manner provided for by Section 10 of the Agreement and the funds shall be dealt with as provided for by that Section;

10. That this Order shall, upon approval of the President, be made effective as of May 29, 1946, provided that the changes in wages provided for in paragraphs 4, 5 and 6 of this Order shall be retroactive to May 22, 1946.

Dated: Washington, D. C., May 31, 1946.

NATIONAL WAGE STABILIZATION BOARD,
/s/ W. WILLARD WIRTZ, *Chairman.*

"Approved May 31, '46.
HARRY S. TRUMAN."

The Industry Members record their dissent as to paragraphs 1, 2, 3, 5, 6, 7, 8, 9 and 10.

43 AGREEMENT

This agreement between the Secretary of the Interior, acting as Coal Mines Administrator under the authority of Executive Order No. 9728 (dated May 21, 1946, 11 F. R. 5593) and the United Mine Workers of

America, covers for the period of Government possession the terms and conditions of employment in respect to all mines in Government possession which were as of March 31, 1946, subject to the National Bituminous Coal Wage Agreement, dated April 11, 1945.

1. *Provisions of National Bituminous Coal Wage Agreement Preserved*

Except as amended and supplemented herein, this agreement carries forward and preserves the terms and conditions contained in all joint wage agreements effective April 1, 1941 through March 31, 1943, the supplemental agreement providing for the six (6) day workweek, and all the various district agreements executed between the United Mine Workers and the various Coal Associations and Coal Companies (based upon the aforesaid basic agreement) as they existed on March 31, 1943, and the National Bituminous Coal Wage Agreement, dated April 11, 1945.

2. *Mine Safety Program*

(a) *Federal Mine Safety Code*

As soon as practicable and not later than 30 days from the date of the making of the agreement, the Director of the Bureau of Mines after consultation with representatives of the United Mine Workers and such other persons as he deems appropriate, will issue a reasonable code of standards and rules pertaining to safety conditions and practices in the mines. The Coal Mines Administrator will put this code into effect at the mines. Inspectors of the Federal Bureau of Mines shall make periodic investigations of the mines and report to the Coal Mines Administrator any violations of the Federal Safety Code. In cases of violation of the Coal Mines Administrator will take appropriate action which may include disciplining or replacing the operating manager so that with all reasonable dispatch said violation will be corrected.

From time to time the Director of the Bureau of Mines may,
44 upon request of the Coal Mines Administrator or the United Mine Workers, review and revise the Federal Mine Safety Code.

(b) *Mine Safety Committee*

At each mine there shall be a Mine Safety Committee selected by the Local Union. The Mine Safety Committee may inspect any mine development or equipment used in producing coal for the purpose of ascertaining whether compliance with the Federal Safety Code exists. The Committee members while engaged in the performance of their duties shall be paid by the Union, but shall be deemed to be acting within the scope of their employment in the mine within the meaning of the Workmen's Compensation Law of the state where such duties are performed.

If the Committee believes conditions found endanger the life and bodies of the mine workers, it shall report its findings and recommendations to the management. In those special instances where the Committee believes an immediate danger exists and the Committee recommends that the management remove all mine workers from the unsafe area, the operating manager or his managerial subordinate is required to follow the recommendation of the Committee, unless and until the Coal Mines Administrator, taking into account the inherently hazardous character of coal mining, determines that the au-

thority of the Safety Committee is being misused and he cancels or modifies that authority.

The Safety Committee and the operating manager shall maintain such records concerning inspections, findings, recommendations and actions relating to this provision of the agreement as the Coal Mines Administrator may require and shall supply such reports as he may request.

3. *Workmen's Compensation and Occupational Disease*

The Coal Mines Administrator undertakes to direct each operating manager to provide its employees with the protection and coverage of the benefits under Workmen's Compensation and Occupational Disease Laws, whether compulsory or elective, existing in the states in which the respective employees are employed. Refusal of any operating manager to carry out this direction shall be deemed a violation of his duties as operating manager. In the event of such refusal the Coal Mines Administrator will take appropriate action which may include disciplining or replacing the operating manager or shutting down the mine.

4. *Health and Welfare Program*

There is hereby provided a health and welfare program in broad outline—and it is recognized that many important details remain to be filled in—such program to consist of three parts, as follows:

(a) *A Welfare and Retirement Fund.*

A welfare and retirement fund is hereby created and there shall be paid into said fund by the operating managers 5¢ per ton on each ton of coal produced for use or for sale. This fund shall be managed by three trustees, one appointed by the Coal Mines Administrator, one appointed by the President of the United Mine Workers, and the third chosen by the other two. The fund shall be used for making payments to miners, and their dependents and survivors, with respect to (i) wage loss not otherwise compensated at all or adequately under the provisions of Federal or State law and resulting from sickness (temporary disability), permanent disability, death, or retirement, and (ii) other related welfare purposes, as determined by the trustees. Subject to the stated purposes of the fund, the trustees shall have full authority with respect to questions of coverage and eligibility, priorities among classes of benefits, amounts of benefits, methods of providing or arranging for provision of benefits, and all related matters.

The Coal Mines Administrator will instruct the operating managers that the obligation to make payments to the welfare and retirement fund becomes effective with reference to coal produced on and after June 1, 1946; the first actual payment is to be made on August 15, 1946, covering the period from June 1 to July 15; the second payment to be made on September 15, covering the period from July 15 to August 31; and thereafter payments are to be made on the 15th day of each month covering the preceding month.

(b) *A Medical and Hospital Fund.*

There shall be created a medical and hospital fund, to be administered by trustees appointed by the President of the United Mine Workers. This fund shall be accumulated from the wage deductions presently being made and such as may hereafter

be authorized by the Union and its members for medical, hospital, and related purposes. The trustees shall administer this fund to provide, or to arrange for the availability of, medical, hospital, and related services for the miners and their dependents. The money in this fund shall be used for the indicated purposes at the discretion of the trustees of the fund; and the trustees shall provide for such regional or local variations and adjustments in wage deductions, benefits, and other practices, and transfer of funds to local unions, as may be necessary and as are in accordance with agreements made within the framework of the Union's organization.

The Coal Mines Administrator agrees (after the trustees make arrangements satisfactory to the Coal Mines Administrator) to direct each operating manager to turn over to this fund, or to such local unions as the trustees of the fund may direct, all such wage deductions, beginning with a stated date to be agreed upon by the Administrator and the President of the United Mine Workers: Provided, however, that the United Mine Workers shall first obtain the consent of the affected employees to such turn-over. The Coal Mines Administrator will cooperate fully with the United Mine Workers to the end that there may be terminated as rapidly as may be practicable any existing agreements that earmark the expenditure of such wage deductions, except as the continuation of such agreements may be approved by the trustees of the fund.

Present practices with respect to wage deductions and their use for provision of medical, hospital, and related services shall continue until such date or dates as may be agreed upon by the Coal Mines Administrator and the President of the United Mine Workers.

(c) *Coordination of the Welfare and Retirement Fund and the Medical and Hospital Fund.*

The Coal Mines Administrator and the United Mine Workers agree to use their good offices to assure that trustees of the two funds described above will cooperate in and coordinate the development of policies and working agreements necessary for the effective operation of each fund toward achieving the result that each fund will, to the maximum degree practicable, operate to complement the other.

47 5. *Survey of Medical and Sanitary Facilities*

The Coal Mines Administrator undertakes to have made a comprehensive survey and study of the hospital and medical facilities, medical treatment, sanitary, and housing conditions in the coal mining areas. The purpose of this survey will be to determine the character and scope of improvements which should be made to provide the mine workers of the Nation with medical, housing, and sanitary facilities conforming to recognized American standards.

6. *Wages*

(a) All mine workers, whether employed by the day, tonnage, or footage rate, shall receive $1.85 per day in addition to that provided for in the contract which expired March 31, 1946.

(b) Work performed on the sixth consecutive day is optional, but when performed shall be paid for at time and one-half or rate and one-half.

(c) Holidays, when worked, shall be paid for at time and one-half or rate and one-half. Holidays shall be computed in arriving at the sixth and seventh day in the week.

7. *Vacation Payment*

An annual vacation period shall be the rule of the industry. From Saturday, June 29, 1946, to Monday, July 8, 1946, inclusive, shall be a vacation period during which coal production shall cease. Day men required to work during this period at coke plants and other necessarily continuous operations or on emergency or repair work shall have vacations of the same duration at other agreed periods.

All employees with a record of one year's standing (June 1, 1945, to May 31, 1946) shall receive as compensation for the above-mentioned vacation period the sum of One Hundred Dollars ($100), with the following exception: Employees who entered the armed services and those who returned from the armed services to their jobs during the qualifying period shall receive the $100 vacation payment.

All the terms and provisions of district agreements relating to vacation pay for sick and injured employees are carried forward to this agreement and payments are to be made in the sum as provided herein.

48 Pro rata payments for the months they are on the pay roll shall be provided for those mine workers who are given employment during the qualifying period and those who leave their employment.

The vacation payment of the 1946 period shall be made on the last pay day occurring in the month of June of that year.

8. *Settlement of Disputes*

Upon petition filed by the United Mine Workers with the Coal Mines Administrator showing that the procedure for the adjustment of grievances in any coal-producing district is inequitable in relation to the generally prevailing standard of such procedures in the industry, the Coal Mines Administrator will direct the operating managers at mines in the district shown to have an inequitable grievance procedure to put into effect within a reasonable period of time the generally prevailing grievance procedure in the industry.

9. *Discharge Cases*

The Coal Mines Administrator will carry out the provision in agreements which were in effect on March 31, 1946, between coal mine operators and the United Mine Workers that cases involving the discharge of employees for cause shall be disposed of within 5 days.

10. *Fines and Penalties*

No fines or penalties shall be imposed unless authorized by the Coal Mines Administrator. In the event that such fines or penalties are imposed by the Coal Mines Administrator, the funds withheld for that reason shall be turned over to the trustees of the fund provided for in Section 4 (b) hereof, to be used for the purpose stated therein.

11. *Supervisors*

With respect to questions affecting the employment and bargaining status of foremen, supervisors, technical and clerical workers employed in the bituminous mining industry, the Coal Mines Administrator will be guided by the decisions and procedure laid down by the National Labor Relations Board.

12. *Safety*

Nothing herein shall operate to nullify existing state statutes, but this agreement is intended to supplement the aforesaid statutes in the interest of increased mine safety.

13. *Retroactive Wage Provisions*

The wage provisions of this agreement shall be retroactive to May 22, 1946.

14. *Effective Date*

This agreement is effective as of May 29, 1946, subject to approval of appropriate Government agencies.

Signed at Washington, D. C., on this 29th day of May 1946.

Coal Mines Administrator.

President, United Mine Workers of America.

Exhibit E 37764

LETTER FROM MR. JOHN L. LEWIS TO SECRETARY KRUG, 21 OCTOBER 1946

Filed, Nov. 18, 1946. Charles E. Stewart, Clerk.

[COPY]

UNITED MINE WORKERS OF AMERICA

John L. Lewis, President Telephone Metropolitan 0530

UNITED MINE WORKERS' BUILDING,
Washington 5, D. C., October 21, 1946.

Honorable J. A. KRUG,
Secretary of the Interior,
Washington, D. C.

DEAR MR. SECRETARY: On Saturday, October 19, 1946, you in conference with me again refused to correct the unilateral misinterpretations you have heretofore issued of the Krug-Lewis Agreement of May 29, 1946. Your interpretative Bulletin No. 5 of June 25, 1946, concerning pro rata vacation payments and your CMAN-8 setting up railroad weights rather than tipple weights upon which to compute the payments due the Welfare and Refirement Fund remain outstanding and uncorrected. They and other similar unilateral misinterpretations constitute a breach of the said Krug-Lewis Agreement. That agreement is an integrated instrument and its respective provisions are interdependent. A breach of any of its provisions breaches the whole.

For ninety days our representatives have protested these breaches of contract which have led to the loss of millions of dollars due to the Mine Workers. Your adamant refusal to correct these errors continues unabated.

The question of pro rata vacation payments has upon the request of the Illinois Coal Operators Association been referred to arbitration and an award was made therein on August 6, 1946. We have called

upon you for its enforcement. You have refused. In addition to these breaches of the contract, significant changes in the Government wage policy have occurred.

Under the contract reopening provisions of the National Bituminous Coal Wage Agreement dated April 11, 1945 (being Section 15 thereof), specifically carried forward into the Krug-Lewis Agreement, either party may give ten days' notice in writing of a date for a negotiating conference upon the matters outlined in said notice. The other party agrees to attend said conference. At the end of fifteen days after the beginning of such negotiating conference, either party may give to the other a notice in writing of the termination of the agreement, to be effective five days after the receipt of such notice.

52 The Krug-Lewis Agreement, having thus been breached by you and significant changes in Government wage policy having occurred, you are accordingly hereby officially notified that the United Mine Workers of America requests a joint conference of the accredited representatives of the joint contracting parties to the Krug-Lewis Agreement of May 29, 1946, for the purpose of negotiating new arrangements affecting wages, hours, rules, practices, differentials, inequalities and all other pertinent matters affecting or appertaining to the national bituminous coal industry. It is suggested that a convening of the conference at ten o'clock A. M., Friday, November 1, 1946, in Washington, D. C., would be appropriate.

Your prompt acknowledgment of the receipt of this notice and your acquiescence to such conference is respectfully requested.

Yours truly,

(Sgd.) JOHN L. LEWIS,
President, United Mine Workers of America.

53 **EXHIBIT F** 37764

LETTER FROM N. H. COLLISSON, CAPTAIN, USNR, COAL MINES ADMINISTRATOR, TO JOHN L. LEWIS, 22 OCTOBER 1946

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

[Copy]

54 UNITED STATES
DEPARTMENT OF THE INTERIOR
COAL MINES ADMINISTRATION

WASHINGTON 25, D. C., *October 22, 1946.*

MR. JOHN L. LEWIS,
President, United Mine Workers of America,
United Mine Workers Building, Washington 5, D. C.

DEAR MR. LEWIS: The Secretary of the Interior has requested me to reply to your letter of October 21 addressed to him.

I desire to reaffirm the position taken in my letter of yesterday prepared prior to the receipt by me of your letter to the Secretary, to the effect that the Coal Mines Administration has not taken any action which would constitute a breach of the Krug-Lewis Agreement.

Those provisions of the District Agreements, carried forward by the

Krug-Lewis Agreement, adequately provide for the settlement of disputes concerning the proper interpretation of the contract by the ultimate submission of these disputes to arbitration. The position of the Coal Mines Administration has always been that the grievance procedure, culminating in arbitration, is the proper medium for the settlement of disputes concerning the meaning of the contract.

That your organization understood this position is evidenced by the fact that it initiated the proceedings resulting in the arbitrator's decision in Illinois concerning pro rata vacation payments to which you refer in your letter. At no time has this Administration refused the enforcement of arbitrators' decisions. Any delay with respect to the over-all effects of the arbitrator's decision in Illinois was caused largely by your illness. Moreover, we wish to correct your statement that this decision was rendered on August 6, 1946. It was actually rendered on August 31, 1946, and this office advised thereof by you by letter dated September 9, 1946.

With respect to your statement that significant changes in Government wage policy have occurred, such changes, if any, provide no contractual basis requiring negotiations for a revision of the Krug-Lewis Agreement.

Your reference to Section 15 of the National Bituminous Coal Wage Agreement of April 11, 1945, as a basis for requiring contract negotiations looking toward a revision of the existing agreement is
55 clearly unwarranted, for a number of reasons. No attempt is made to detail all these reasons but, among them, is the obvious fact that the Krug-Lewis Agreement itself superseded Section 15 of the National Bituminous Coal Wage Agreement. The Krug-Lewis Agreement states that it "*covers for the period of Government possession the terms and conditions of employment in respect to all mines in Government possession.*" This statement of the Agreement's life is unqualified. The Krug-Lewis Agreement carries forward only those terms and provisions of past contracts which were not amended or supplemented by the Krug-Lewis Agreement. To now contend that the life of the Krug-Lewis Agreement was subject to the provisions of Section 15 of the 1945 Agreement is tantamount to contending that the Krug-Lewis Agreement could have been reopened the day after it was signed. Obviously, the unqualified statement of the May 29, 1946, document amends and eliminates the 1945 provisions which you cite.

I am, therefore, unable to treat your letter of October 21, 1946, as a notice given pursuant to any existing contract provisions requiring a joint conference for the purpose of negotiating new arrangements affecting wages and other matters.

This Administration considers that the Krug-Lewis Agreement is in full force and effect and calls upon the United Mine Workers of America, who have always prided themselves on fulfilling their contract obligations, to abide by the terms of that agreement.

This Administration is ready, as it has been in the past, to meet with you to discuss matters affecting the operation of the bituminous coal mines under the Krug-Lewis Agreement, and for that purpose, with the above reservation, any date for such discussions is agreeable to this administration.

It is suggested that any negotiating conferences looking toward a new agreement for the operation of the bituminous coal mines be had

with the representatives of the owners of such mines. The Coal Mines Administration continues ready to lend its good offices to promoting such negotiating conferences, thereby continuing the negotiations which were temporarily recessed pending the Mine Workers Convention early this month. Such an agreement would accomplish the result which has been publicly expressed as the desire of the Coal Mines Administration, the United Mine Workers, and the operators, namely, the return of the mines to private operation.

Very truly yours,

/S/ N. H. COLLISSON,
Captain, USNR,
Coal Mines Administrator.

56 *Exhibit G* 37764

LETTER FROM MR. JOHN L. LEWIS TO SECRETARY KRUG, 22 OCTOBER 1946

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

Copy

57 UNITED MINE WORKERS OF AMERICA

John L. Lewis, president Telephone Metropolitan 0530

UNITED MINE WORKERS BUILDING,
Washington 5, D. C., October 22, 1946.

Honorable J. A. KRUG,
Secretary of the Interior,
Department of the Interior, Washington, D. C.

DEAR MR. SECRETARY: This will reply to your telegram from Amarillo and Collisson's letter from Washington of October 22.

The existing Krug-Lewis Agreement expressly provides that both parties to the agreement are bound to meet within a ten-day period from formal request of either party. Such formal request was filed yesterday by the United Mine Workers of America.

Failure on your part to honor this meeting will constitute another breach of the contract, and will void the Krug-Lewis Agreement.

Yours truly,

/s/ JOHN L. LEWIS, *President.*

L:h.

58 *Exhibit H* 37764

COPY OF TELEGRAM FROM SECRETARY KRUG TO MR. JOHN L. LEWIS, 27 October 1946

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

59 "Replying to your letter of 21 October I am requesting that you and/or your representatives meet with Coal Mines Administrator Collisson and his associates on 1 November or any other date agreeable to you."

60 *Exhibit I* 37764

COPY OF TELEGRAM FROM MR. JOHN L. LEWIS TO SECRETARY KRUG, 28 OCTOBER 1946

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

61 "I esteem your telegram 27th, received by me today, as compliance with request for official conference contained my letter 21 October. I accordingly advise that representative United Mine Workers will meet with Coal Mines Administrator Collisson and his associates at 11 o'clock a. m. on Friday, 1 November. Under these conditions, Krug-Lewis agreement remains effective and unchanged during period of negotiations."

62 *Exhibit J* 37764

TEXT OF LETTER FROM SECRETARY OF THE INTERIOR, J. A. KRUG, TO JOHN L. LEWIS, PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, 14 NOVEMBER 1946.

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

63 NOVEMBER 14, 1946.

MY DEAR MR. LEWIS: In our meeting of November 11 you presented certain proposals for modification of the present contract under which the members of the United Mine Workers are working for the period of Government possession. This was the first time since the conference began on November 1 that any specific proposals for modification of the existing contract have been advanced by the United Mine Workers.

I am obliged to inform you that certain of your proposals are of such a fundamental nature that they should be directed to the owners and private operators of the bituminous coal mines rather than to the Government, which is only the interim custodian of these properties.

The Government took over the bituminous mines last May only after it became clearly evident that this was the only available means of averting an economic disaster to the country. Since that time the Government has made diligent efforts to return the mines to private operation with an assurance of continued production. The United Mine Workers have formally and publicly expressed themselves in favor of an early return of the mines to private operation. The operators have stated that they, too, are anxious to regain control of their properties. I am convinced that any substantial change in wage rates and hours of employment made by the Government at this time would postpone for an indefinite period the return of the mines to their owners, and would thwart the expressed and sincere wishes of all persons concerned for genuine collective bargaining between management and labor in the bituminous coal industry.

The Government is bending every effort to restore the national economy to its normal peacetime operation. To this end, the President has just announced the removal of virtually all wage and price con-

trols. It would contradict this policy, and be inimical to the best interest of the coal miners and of the country, should the Government prolong indefinitely its temporary role as a substitute for one of the parties in the collective bargaining which must be the foundation of a healthy coal industry.

64 I express no views whatever upon the intrinsic merits of any of your proposals, but must advise you that they are of such a nature that the Government should not make them a part of its existing contract with the mine workers.

I have frequently urged that you meet with representatives of the Coal Operators in order to negotiate, through the normal processes of collective bargaining, a new contract for the coal industry. I outlined to you yesterday an arrangement by which these negotiations might proceed under conditions which would be fair to both parties. Under this arrangement I would convene a conference between United Mine Workers and the Bituminous Coal Operators Negotiating Committee on November 16, or the soonest practicable date thereafter. In order that coal production might be maintained during these negotiations, Government operation of the mines under the Krug-Lewis Agreement would be continued for a maximum period of two months. During the first of these months the situation would be held in status quo, without retroactive wage changes and with a prohibition against increasing the price of coal sold from a mine in Government possession except upon the prior approval of the Coal Mines Administrator. To hasten the process of collective bargaining, if no agreement should be reached during this first month, the price limitations would be removed and any changes thereafter agreed upon as to wages and hours would be made retroactive to December 16, 1946. If no agreement should be reached by January 16, 1947, the mines would be returned to private possession on that date and the normal operation of economic forces would then prevail in the coal industry.

The operators have agreed to accept this arrangement. I urge that you, too, accept this arrangement and meet with the representatives of the operators on November 16 or at the earliest convenient date, in a sincere effort to reach an agreement which will restore the mines to private operation.

The Coal Mines Administration, as you know, has consistently taken the position that the Krug-Lewis Agreement, except as it may be modified by mutual consent or by petition under Section 5 of the War Labor Disputes Act, covers the period of Government possession. I have been informally advised by the Attorney General of the United States that this interpretation of the contract is correct. I expect, whatever decision you should reach with respect to negotiating with the operators, that the United Mine Workers will honor our present contract and make every effort to insure that the Nation obtains the coal production which it so desperately needs.

Sincerely,

J. A. KRUG
Secretary of the Interior.

65 *Exhibit K* 37764

LETTER FROM ATTORNEY GENERAL CLARK TO SECRETARY KRUG, 15 NOVEMBER 1946

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

66 NOVEMBER 15, 1946.

The Honorable The SECRETARY OF THE INTERIOR,

MY DEAR MR. SECRETARY: Under date of October 31, 1946, I sent you an informal letter of advice relative to further negotiations under the agreement which you executed on May 29, 1946, with the representatives of the United Mine Workers of America. My letter concluded by saying:

"This is to advise you that in my opinion there is no legal obstacle to such further negotiations. Nor is there any legal impediment to modification of the existing contract so as to reflect changes in wages and other terms and conditions of employment, provided such modification, if any, is satisfactory both to the Government and to the United Mine Workers of America. This is true whether or not section 15 of the agreement of April 11, 1945, is deemed applicable in the present situation, and accordingly I do not believe it necessary at this time to pass upon any question relative to that section. The negotiations can, of course, proceed without prejudice to the rights of either party."

By letter dated November 4, 1946, you advised me that it is of importance to both parties "to know whether section 15 of the 1945 contract does in fact apply" to the present conferences. You accordingly requested my views on that question, and upon your return to the city I gave them to you informally. Today you have requested a formal confirmation, which I am now pleased to give you.

The agreement which you and the miner's union executed on May 29, 1946, opens with the recital that "this Agreement * * * covers for the period of Government possession the terms and conditions of employment in respect to all mines in Government possession * * *." It goes on to provide in paragraph 1 that "except as amended and supplemented herein, this Agreement carries forward and preserves the terms and conditions contained in all joint

67 wage agreements effective April 1, 1941, through March 31, 1943 * * * and the National Bituminous Coal Wage Agreement, dated April 11, 1945."

The agreement of April 11, 1945, just referred to, contains the following provision, which forms the second paragraph of section 15:

"At any time after March 1, 1946, either party may give ten days' notice in writing of a desire for a negotiating conference upon the matters outlined in said notice. The other party agrees to attend said conference. At the end of fifteen days after the beginning of such negotiating conference either party may give to the other a notice in writing of the termination of this Agreement, to be effective five days after the receipt of such notice."

In my opinion the provision which I have just quoted is no longer in force. The agreement of May 29, 1946, expressly provides that it

"covers for the period of Government possession the terms and conditions of employment." It thereby specifies the period during which it is to remain in force and, accordingly, "amends and supplements" section 15 of the 1945 agreement, which provided an opportunity for renegotiation and termination of the terms and conditions of that contract at any time either party desired after March 1, 1946.

This conclusion is reinforced by an examination of the provisions of the War Labor Disputes Act (57 Stat. 163), under which possession of the mines was taken by the United States. (See Executive Order No. 9728 dated May 21, 1946.) The provisions of that Act contemplate, first, that the operations of plants and mines in Government possession shall continue without interruption, and, second, that there shall be an equitable approach to the problem of fixing terms and conditions of employment in such plants and mines.

The contract here under discussion must be interpreted and applied in the light of those objectives. The War Labor Disputes Act sets forth in detail the method whereby changes in such terms and conditions of employment may be effected. It specifically provides, in Section 5, that after possession has been taken by the Government "the Government agency operating such plant, mine, or facility, or a majority of the employees of such plant, mine, or facility, or
68 their representatives, may apply to the National War Labor Board for a change in wages or other terms or conditions of employment in such plant, mine, or facility." This provision was designed to enable the National War Labor Board to take action from time to time to meet changing conditions. The successor to the National War Labor Board, for the purpose of making determinations under section 5 of the Act, is now the National Wage Stabilization Board (see Executive Order No. 9672, dated December 31, 1945, 11 F. R. 221). That Board on May 31, 1946, issued an order promulgating the terms and conditions of employment established by the agreement of May 29, 1946.

Nothing in the agreement of May 29 purports to limit or alter in any way the right and privilege of either party to the agreement under section 5 of the Act to seek from time to time any necessary or desirable change in terms and conditions of employment. It may be that the guarantee which Congress has given to section 5 cannot be contracted away. That is a question which I do not have to decide in the present case because I do not believe that you and the union representatives intended to contract it away. The agreement you entered into cannot possibly be so interpreted, under its terms. It must follow, therefore, that even though section 15 of the 1945 agreement is not applicable, the employees of the mines may at any time apply to the National Wage Stabilization Board to request changes in terms and conditions of employment.

If I can be of further assistance to you, please let me know.

With kind personal regards,

Sincerely yours,

(Signed) TOM C. CLARK,
Attorney General.

69 *Exhibit L* 37764

LETTER FROM MR. JOHN L. LEWIS TO SECRETARY KRUG, 15 NOVEMBER 1946

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

70 9043

[COPY]

UNITED MINE WORKERS OF AMERICA

John L. Lewis, president. Telephone: Metropolitan 0530.

UNITED MINE WORKERS' BUILDING,
Washington 5, D. C., November 15, 1946.

Honorable J. A. KRUG,
Secretary of the Interior,
Washington, D. C.

DEAR MR. SECRETARY: In accordance with the provisions of the Krug-Lewis Agreement dated May 29, 1946, the United Mine Workers of America on October 21, 1946, officially requested a joint conference of the accredited representatives of the joint contracting parties to said agreement. Such conference convened on November 1, 1946.

Fifteen days having now elapsed since the beginning of said conference, the United Mine Workers of America, exercising its option hereby terminates said Krug-Lewis Agreement as of 12:00 o'clock P. M., Midnight, Wednesday, November 20, 1946.

Yours truly,

UNITED MINE WORKERS OF AMERICA,
By JOHN L. LEWIS [s], *President.*

71 *Exhibit M* 37764

LETTER FROM SECRETARY KRUG TO MR. JOHN L. LEWIS, 15 NOVEMBER 1946

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

72 9040

THE SECRETARY OF THE INTERIOR,
Washington, November 15, 1946.

MR. JOHN L. LEWIS,
President, United Mine Workers of America,
15th and I Streets NW., Washington, D. C.

DEAR MR. LEWIS: I have received your two letters of November 15, one of which undertakes formally to give me notice that the Government contract with the United Mine Workers will be terminated by you at midnight on November 20, and the other of which amplifies your reasons for giving this notice. I must advise you that you have no power, under the Krug-Lewis Agreement of May 29 or under the

law, by unilateral declaration to terminate the contract which by its terms "covers for the period of Government possession the terms and conditions of employment." I have since my letter to you of November 14 received from the Attorney General of the United States a formal opinion which rules that you are without power to terminate this contract with the Government.

In view of the important national considerations mentioned by the President in his statement of today, and in view of the official ruling of the Attorney General as to the obligations of the United Mine Workers under their contract, I again urge you to reconsider the position indicated in your letter of today and to enter into conferences with the Bituminous Coal Operators' Negotiating Committee without loss of the coal production which is so critically needed at this time.

Sincerely yours,

J. A. Krug.

J. A. KRUG.

A1 Civil No. ——

In the District Court of the United States
for the District of Columbia

UNITED STATES OF AMERICA, PLAINTIFF,

v.

UNITED MINE WORKERS OF AMERICA, ET AL., DEFENDANTS

C. A. 37764

Filed November 18, 1946. Charles E. Stewart, Clerk.

Supporting affidavits

J. A. Krug, Secretary of the Interior,
James Forrestal, Secretary of the Navy,
Robert P. Patterson, Secretary of War,
John D. Small, Administrator, Civilian Production Administration,
G. H. Helmbold, Managing Director, Ship Operations, United States Maritime Commission,
Leland Olds, Chairman, Federal Power Commission,
James A. Crabtree, Acting Surgeon General, Public Health Service, and,
J. M. Johnson, Director, Office of Defense Transportation.

A5 *Supporting Affidavit of J. A. Krug, Secretary of the Interior*

Filed November 18, 1946. Charles E. Stewart, Clerk.

A6 In the United States District Court for the District of Columbia

37764

UNITED STATES OF AMERICA, PLAINTIFF,

v.

UNITED MINE WORKERS OF AMERICA, ET AL., DEFENDANTS

Filed November 18, 1946. Charles E. Stewart, Clerk.

CITY OF WASHINGTON,
District of Columbia, ss:

J. A. KRUG, being duly sworn, deposes and says:

1. I am now and have been since prior to May 1, 1946, the Secretary of the Interior and make this affidavit in that capacity.

2. Pursuant to Executive Order of the President of the United States No. 9728, dated May 21, 1946, possession of certain mines in the United States producing bituminous coal was taken for and in behalf of the United States. As stated in said Executive Order possession of said mines was taken because of interruptions in the operation thereof as a result of existing strikes and other labor disturbances. These strikes and labor disturbances had continued since April 1, 1946, following termination of the National Bituminous Coal Wage Agreement of April 11, 1945, between the United Mine Workers of America (hereinafter called U. M. W. A.), and the owners and private operators of the mines whose production employees are represented by the U. M. W. A.

A7 3. Since such original possession of bituminous mines was so taken the possession of certain mines has been terminated and possession has been taken of certain additional mines pursuant to said Executive Order. As of the date of this affidavit, and pursuant to said Executive Orders, the United States is in possession of and operating, or causing to be operated, in excess of 2,200 mines producing bituminous coal. These constitute those mines producing more than approximately 50 tons per day with rail or river connections which were operated under contract with the U. M. W. A. on March 31, 1946.

4. As authorized by Executive Order 9728 and following extended and arduous negotiations with the representatives of U. M. W. A. as Coal Mines Administrator, I, acting in behalf of the United States, entered into a contract with U. M. W. A. dated May 29, 1946, which contract became effective as of that date subject to the approval of appropriate Government agencies. By its order dated May 31, 1946, and approved by the President of the United States on the same day, the National War Stabilization Board, pursuant to Section 5 of the War Labor Disputes Act (50 U. S. C. 1505), ordered changes in wages and other terms and conditions applicable to the mines in Government possession as covered and provided for in said Agreement dated May 29, 1946.

5. On November 15, 1946, I received a notice from U. M. W. A. dated November 15, 1946, purporting to terminate, as of 12 00 p. m. Wednesday, November 20, 1946, the Agreement of May 29, 1946. A copy of this notice is attached to the Complaint herein.

6. On information and belief, it is the established policy of U. M. W. A., as an organization and as individuals, that where no formal contract or interim arrangement or understanding satA8 isfactory to U. M. W. A. exists, no work is performed. The source of my information and the grounds of my belief are various public statements made by officials of U. M. W. A. and the repeated failure and refusal of the membership of that organization to work when it had been declared by the representatives of U. M. W. A. that no contract or other satisfactory interim arrangement exists. Upon such information and belief, it is, therefore, concluded that work by the members of U. M. W. A. will cease at midnight on Wednesday, November 20, 1946, unless the alleged notice of termination dated November 15, 1946, referred to above is withdrawn and cancelled.

7. Attached hereto is a table showing various statistics and facts regarding the effect on the national economy of continued nonproduction of bituminous coal in the mines now in Government possession, whose operation is covered by the Agreement of May 29, 1946. Of approximately 2,750 bituminous coal mines producing over 50 tons per day with rail and river connection, over 2,200 are in the possession of the Government under the Executive Order and operated under said Agreement of May 29, 1946. Of an approximate weekly average production of 12,130,000 tons from all bituminous mines, approximately 10,500,000 tons or 87% are produced from mines in Government possession.

8. At the commencement of the work stoppage on April 1, 1946, following termination of the Agreement of April 11, 1945, the coal stocks above ground in the United States were approximately 58,531,000 tons and the impact of the stoppage upon the economy of the country became crucial in less than two months. As of November 16, 1946, there were coal stocks above ground estimated at 57,000,000 tons. Nonproduction from and after November 21 of coal from mines in the possession of the United States would accordingly result in shut-down of essential industrial and transportation facilities of the United States progressively, as shown by the estimates conA9 tained in paragraph 7 of said table. From this it appears that within 60 days 64% of electrical power utilities, 60% of steel and rolling mills, 90% of byproduct coke plants, 86% of Class 1 railroads, 90% of cement mills, and 70% of other industrials would be shut down for lack of coal.

9. In addition to the above, the availability of bituminous coal for domestic heating purposes would be severely curtailed with severe detriment to the health and welfare of all persons occupying buildings and homes heated from coal.

10. Shipments of bituminous coal to foreign countries averaged nearly 600,000 tons per week in July and 322,560 tons of such coal was shipped to foreign countries November 1–12, 1946. The preservation of domestic stocks in the event of nonproduction of coal from mines in Government possession would probably require cessation of all foreign shipments, thereby vitally affecting the fulfillment of the commitments of the United States in this regard.

11. From the above, it clearly appears that the general welfare and the national economy would be vitally and irreparably damaged by

any extended nonproduction of bituminous coal from the mines in the possession of the Government and whose operations are subject to the provisions of the Agreement of May 29, 1946.

J. A. KRUG.

Subscribed and sworn to before me this 17th day of November 1946.

MARY M. REPELL,
in and for Wash. D. C.

My Comm. expires 12-1-49.

A10

1. Mines in government possession:	
(a) Total number of mines	2,250
(b) Average weekly tonnage produced	10,556,000
(c) Percent of total U. S. weekly production [1]	87.0
2. Mines in the United States with rail or river connections and other mines producing over 50 tons daily:	
(a) Total number of mines	2,850
(b) Average weekly tonnage produced	11,526,000
(c) Percent of total U. S. weekly production [1]	95.0
3. Bituminous Coal Stocks (net tons):	
(a) April 1, 1946	58,531,000
(b) October 1, 1946	52,367,000
(c) November 16, 1946 [2]	57,000,000
4. Bituminous production during spring 1946 strike period; tonnages for weeks ending:	
April 6	850,000
April 13	650,000
April 20	710,000
April 27	750,000
May 4	520,000
May 11	470,000
Average for six-week period	658,000

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

5. Number of bituminous coal miners:	
(a) Total all mines	400,000
(b) Total at mines in government possession	350,000
6. Bituminous coal shipments to Europe and North Africa in net tons: [3]	
July 1–9	690,368
July 10–16	607,712
July 17–26	416,640
July 27–30	840,672
Average weekly in July (4.29 weeks)	595,682
November 1–12	322,560

7. Estimated impact of coal strike on operations of industrial plants in the United States:

	Percent of Plants Forced to Shut Down or Curtail Production Within—			
Consumer Group:	*15 days*	*30 days*	*45 days*	*60 days*
Electric power utilities	18	35	53	63
Steel and rolling mills	9	23	46	60
Byproduct coke plants	29	78	84	90
Railroads (class I)	15	56	76	86
Cement Mills	22	56	84	90
Other industrials	25	42	57	70

A11

[1] Average weekly production for all bituminous mines in the United States, June 3–Nov. 9, 1946, was 12,1[illegible]00 net tons.
[2] Estimated.
[3] Shipments during months subsequent to July 1946 have been curtailed by maritime strikes.

A12 *Supporting affidavit of James Forrestal, Secretary of the Navy* 37764

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

A13 EN1:3:am

AFFIDAVIT 37764

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

WASHINGTON,

District of Columbia, ss:

I, James Forrestal, Secretary of the Navy, having been first duly sworn, do depose and state as follows:

That the total stocks of all types of coal on hand in coal piles located at naval installations within the continental limits of the United States are estimated to be 542,000 tons of which 437,000 tons is bituminous coal;

That consumption of coal within continental United States by the naval establishment for the month of September 1946, was 62,000 tons of all types, and it is estimated that requirements will increase to 145,000 tons per month for the winter months;

That the physical location of coal stocks among the various naval installations is not directly proportional to the requirements at such stations since some stations operate substantially on the basis of current needs, whereas at other stations, where storage conditions permit, coal stocks beyond immediate current needs have been accumulated as a reserve for use in the event of a failure in commercial supply, and therefore redistribution operations must commence in approximately twenty days after the date of cessation of deliveries;

That any reduction of railroad and other transportation operations will adversely affect the ability of the Navy to effect any necessary redistribution of the coal stocks among its installations;

That the foregoing does not take into consideration any diversion of Navy coal or increased demands for Navy power generated by coal which may be directed to meet the critical or emergency requirements of other users. Based upon past experience it is reasonable to anticipate that such diversions and increased demands will be made in case of any stoppage of coal production for any considerable period of time; and

A14

That any curtailment of the capacity of the Nation's industry and transportation facilities due to a serious coal shortage will have an adverse affect upon the effectiveness of the Navy in the performance of its functions.

The foregoing is true and correct to the best of my knowledge and belief.

(s) JAMES FORRESTAL,
Secretary of the Navy.

SUBSCRIBED AND SWORN TO before me, a Notary Public in and for the District of Columbia, this 18th day of November 1946.

(SEAL) LUCILLE HOLLAND /s/
Notary Public.

My Commission expires Nov. 5, 1951.

A15 *Supporting Affidavit of Robert P. Patterson, Secretary of War* 37764

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

A16 WAR DEPARTMENT,
Washington, 18 Nov. 1946.

ROBERT P. PATTERSON, Secretary of War, being duly sworn, deposes and says:

In the event of a nation-wide strike of bituminous coal miners, the War Department would be first concerned with the resulting curtailment of domestic rail transportation to ports and the effect of such curtailment upon overseas shipments of food and other supplies, particularly flour and wheat for the occupied countries. Shipments of these two commodities are already behind schedule.

The Office of Defense Transportation informs me that American coal-burning railroads have on hand approximately 30 days' supply of coal and that a strike would mean an immediate curtailment of rail operations, which curtailment would increase in extent as the strike continued. It has been the War Department's experience in the past that such a situation would be felt by the War Department within a period of 10 days and would grow progressively worse.

The War Department also is seriously concerned with any diminution of the amount of coal available for export to occupied European countries and with the resulting adverse effect upon, and added cost to the United States of, rehabilitation activities in those countries.

While there is no immediate shortage in the coal supply for the War Department's own domestic installations, a continuance of a coal strike for any appreciable period would adversely affect the maintenance and operation of these installations.

ROBERT P. PATTERSON /s/

Subscribed and sworn to before me this 18th day of November 1946.

[SEAL] GLENN W. HITT, /s/
Notary Public.

(My commission expires 20 April 1950.)

A17 *Supporting affidavit of John D. Small, Administrator, Civilian Production Administration* 37764

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

A18 In the District Court of the United States for the District of Columbia

Civil Action No. —

UNITED STATES OF AMERICA, PLAINTIFFS

v.

UNITED MINE WORKERS OF AMERICA, ET AL., DEFENDANTS

37764

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

Affidavit of John D. Small, Administrator, Civilian Production Administration

CITY OF WASHINGTON, *District of Columbia, ss:*

I, John D. Small, being first duly sworn, do hereby depose and say as follows:

1. I am the duly appointed Administrator of the Civilian Production Administration.

2. Bituminous coal is a basic material in industry and is the major fuel used to heat American homes. Bituminous coal is essential to the production of other basic materials, including steel, copper, lead, zinc, aluminum, cement, rubber and many others. These materials in turn are essential to every manufacturing and processing plant in the country, and are used to produce all kinds of consumer and producer goods such as refrigerators, washing machines, farm machinery, automobiles and trucks. In addition, coal itself is essential as a fuel or source of power for the operation of most industrial plants in the country.

3. Coal is used to produce electricity and manufactured gas. Over 50% of the electric power consumed in the country is dependent on coal. Many communities are dependent upon manufactured gas for heating and cooking.

4. Coal is the principal source of power used by the American railroads.

A19 5. Coal is the only fuel available to heat most American homes.

6. There is a world deficiency of available coal. War devastated areas of Europe are dependent upon American coal to help fill the wide gap between minimum requirements and available supplies.

7. I am informed and believe that as of October 1, 1946, industrial plants, including railroads, had not more than an average of 43 days' supply of bituminous coal on hand and retail dealers had not more than an average of 12 days' supply of bituminous coal on hand.

8. I am informed and believe that stocks of bituminous coal are now considerably lower than they were just prior to the Spring strike which started April 1, 1946.

9. I am informed and believe that the major industrial users had supplies of bituminous coal as follows on October 1, 1946, and on April 1, 1946.

	Oct. 1, 1946	April 1, 1946
Electric power utilities	70 days	95 days.
Byproduct coke ovens	22 days	36 days.
Steel and rolling mills	35 days	38 days.
Cement mills	41 days	42 days.
Other industrial users	58 days	48 days.
Railroads	30 days	39 days.

10. The supplies of coal mentioned above as of October 1, 1946, are based on the rate of consumption during September. With winter approaching, the rate of consumption will increase. I am informed and believe that stocks of coal on hand at present are therefore not more, and may be less, in terms of days supply, than the number of days supply on hand October 1, 1946.

11. The foregoing figures on supplies of coal are average figures. I am informed and believe that many industrial plants in all categories have stocks sufficient only for a few days operation. I am informed and believe that many retail dealers have virtually no stocks on hand at all but are making deliveries as rapidly as new supplies are
A20 received. Home owners who use coal for heating are dependent upon continued shipments of coal to the dealers.

12. Not only are actual coal stocks lower than they were before the coal strike last Spring but consumption is running higher both because of the seasonal requirements and the higher rate of industrial activity. Coal consuming plants, making everything from automobiles and refrigerators to cement and cast iron soil pipe for veterans houses, are now more fully manned than six months ago and are operating in many cases at maximum rates, limited only by availability of materials such as sheet steel or iron castings.

13. Many types of soft coal are not being produced in sufficient quantities to meet the current demands. Any stoppage in coal production will necessarily cause a loss in the production of manufactured products which cannot be made up. A stoppage in the production of bituminous coal will be felt throughout the economy. In some instances the impact will be immediate. Many industrial plants receiving coal on a hand-to-mouth basis will close immediately with resulant loss of wages to their employees. A stoppage in bituminous coal production will mean that in a matter of days a great many people will be without fuel to heat their homes.

14. Even where the impact is not immediate, a loss in bituminous coal production will mean a loss of production throughout industry with resultant unemployment. Bituminous coal is used at the beginning of a long production cycle. Because of this fact the impact of loss of coal production is not immediately felt at all stages of production. Even the basic industries such as steel are cushioned from the strike by stocks on hand and in transit. The steel consumer in turn is protected for an additional period of time since he can still draw on the "pipe line" of raw steel products. But these stocks of coal and materials on hand and in transit merely postpone the day when the disastrous efforts of the stoppage of coal at the source will
A21 be felt. Even after the miners return to the pits it takes 10 days to 2 weeks before coal consumers begin to receive a regular supply. Plants which have been forced to shut down for lack of fuel require additional time to build up sufficient stocks to resume operations. After that the first weeks of production of basic materials have to be used to refill depleted "pipe lines" and thus it goes throughout the whole intricate industrial system.

15. A stoppage of work in the coal mines for any period of time would, in my opinion, cause extreme hardship to many people. Each day's loss of production would mean an increasing slow-down in industrial production with more and more plants being forced to close. A stoppage in the production of coal for as long a period as the stoppage last Spring would close the steel mills and other basic material plants and would stall a major portion of the nation's transportation facilities. In turn, metal using industries and other plants would be

forced to close. In my opinion, a stoppage of coal production of the same duration as the one last Spring would ultimately bring American industry to a virtual standstill. Such a stoppage would not only create mass unemployment in all industrial centers but would create serious hazards to public health and safety. For example, stocks of food at food processing plants would spoil and the shortage of fuel, electric power and manufactured gas would reach into every home dependent on these utility services.

16. The cost to the economy of the coal strike last spring is a clear indication of the disastrous results which would follow a coal strike at this time. I believe that the Spring coal strike cost the country close to 2 billion dollars in loss of production, not counting the loss in wages by the million-odd workers made idle by the strike. The production of durable goods, including automobiles, was set back at least three months by the strike. Important programs, such as the food program and the Veterans' Emergency Housing Program, received serious setbacks; the production of critical building materials, such as brick tile, cement, gypsum board, heating equipment, cast iron soil pipe, pressure pipe, nails, sheet steel, and many others suffered irreparable damage from the coal shortage. Zinc and lead production was lost because of the power shortage resulting from lack of coal.

A22 17. Steel production lost as a result of the last soft-coal strike amounted to approximately 5 million ingot tons. This loss of steel tonnage in an economy already very short of steel has hampered, and is still retarding, production.

18. The loss of merchant pig iron accompanying the shut-down of blast furnaces due to the last coal strike cut into the output of such critical building materials as soil pipe, pressure pipe, radiators, and bathtubs—items which are now holding back the Veterans' Emergency Housing Program. The loss of merchant pig iron production affected other important industries using malleable and gray iron castings, for example, automobiles, railroad equipment, farm machinery, and fractional horsepower motors. Particularly hard hit were manufacturers of component parts for automobiles and trucks, such as wheels, piston rings, and steering wheels. Months later automobile production is still being delayed by shortages of particular component parts, with a resultant lack of balance causing swollen inventories, increased costs, and a lack of smooth production.

19. In my opinion, a prolonged suspension of bituminous coal mining would cause irreparable injury to the economy of the country—to industry and to labor—and would cause acute hardship and suffering to untold numbers of people.

JOHN D. SMALL /s/

Subscribed and sworn to before me this 18th day of November 1946.

[SEAL] FLORENCE I. BLOOMBERG /s/.
Notary Public, D. C.

My commission expires March 1, 1947.

A23 *Supporting affidavit of G. H. Helmbold, Managing Director, Ship Operations, United States Maritime Commission* 37764

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

A24 In the United States District Court for the District of Columbia

37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA ET AL., DEFENDANTS

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

CITY OF WASHINGTON,
District of Columbia, ss:

G. H. Helmbold, being duly sworn, deposes and says:

I am the Managing Director, Ship Operations, United States Maritime Commission, and make this affidavit on behalf of said United States Maritime Commission and its Chairman.

The United States Maritime Commission was created by an act of Congress, approved June 29, 1936 (49 Stat. 1985), to administer the Merchant Marine Act of 1936; which is expressly intended to foster and develop a United States Merchant Marine capable of carrying a substantial portion of our water-borne imports and foreign exports, and to serve as a naval and military auxiliary in time of war or national emergency.

In addition, the Commission is responsible for administering the Merchant Marine Sales Act of 1946, the purpose of which is to dispose of the large war-built tonnage to private operators. The Commission is now carrying on many of the final phases of the War Shipping Administration's activities. It has been operating a substantial number of ships but it is endeavoring as rapidly as possible to transfer from government operation to private operation. The Commission is, therefore, directly concerned with any activity which in any way interferes with government-operated ships as well as anything which retards the sale or charter of government-owned vessels.

A25 Coal is an important export commodity at this time not only from the point of view of shipping but also for the rehabilitation of the devasted foreign areas. Coal exports from the United States now utilize approximately 250 shipments per month. Most of these in the early months of this year were carried by government-owned and operated vessels. As of this date the major portion of those vessels are privately operated vessels held under bare boat charter from the Government. If there is a reduction in the amount of export coal, many bare boat operators will be compelled to return these vessels to the United States Government with a consequential loss of revenue to the Government. All the charters contain a provision that either party (United States Government or the charterer) may cancel on 15 days' notice.

Aside from the number of vessels that may be returned by these charterers, other vessels now under consideration for charter, will not be chartered if there is a reduction in the amount of export coal. A stoppage of coal exports at this time will, therefore, directly affect

the Commission's policy in endeavoring to rejuvenate private operation of the United States Merchant Marine.

The Commission is also concerned with the direct effect of a stoppage on the number of persons employed directly and indirectly in the shipping industry. It is estimated that about 25,000 persons, including ships' crews, stevedores, terminal operators and others directly and indirectly concerned with the coal export program will be placed in unemployment for the duration of any suspension of coal mining.

At the present time approximately 2,000,000 tons of coal are being moved every month in coastwise traffic, either all water-borne or partly water-borne or partly carried by rail. At the same time
A26 between 1,800,000 and 2,100,000 tons a month are being carried from coast ports to European areas. The coastwise traffic involves approximately 50 privately owned vessels while the foreign trade involves a total of approximately 500 ships (250 ships going out and 250 ships coming in). Of this total, about 400 ships are Government-owned, directly operated or bare-boat-chartered. The balance are foreign flag.

A complete stoppage of production at the coal mines would soon completely interrupt this foreign and coastwise traffic with not only the disruption of revenue to the Government and private operators but would also result in serious unemployment conditions. This interference and its dangerous results are wholly apart from indirect and additional interferences with shipping which would result from any interference with rail transportation.

The shipping industry is, of course, generally dependent upon rail transportation for receipt of its general cargoes and for ship supplies.

At the present time a total of 1,863 vessels of government ownership operated either by the Government under general agency agreements or by private operators under bare-boat charters, are now in service. It is estimated that an additional 600 American-flag vessels of private ownership are now in operation. To the extent that a stoppage of coal mining results in interference with rail transportation and consequently with delivery of cargoes and supplies to shipside, all of these vessels can be put wholly or partly out of service in a short time.

In the event that the 400 Government vessels now engaged in carrying coal are put out of service, I estimate that the monthly loss to the Government in freight and charter hire, together with the loss resulting from laying up expenses would amount to an aggregate of approximately $11,250,000 per month.

A27 The actual effect of a stoppage of coal production was demonstrated in the months of April and May, 1946, when the coal miners refused to work until a new contract had been awarded them. In the month of March, 1946, a total of 258 coal cargoes were carried in the export trade; in the month of April, when the strike occurred, the number of cargoes so carried fell to 101; in the month of May, the number again fell to 41; in the month of June, although the miners had returned to work in May, the effects of the stoppage were still felt and only 126 cargoes were carried. It was not until July that normalcy was again reached.

Under these circumstances, the threatened stoppage of bituminous coal mine production will seriously disrupt the shipping industry,

interfere with present programs relating to the liquidation of the government ownership in the Merchant Marine and the reestablishment of private operation, would seriously affect employment in the merchant marine, and related fields of employment and would result in serious and irreparable injury to the Government and private ship operators as well as the American people and all others dependent upon our coal exports.

G. H. HELMBOLD /s/.

Subscribed and sworn to before me this 18th day of November 1946.

[SEAL] RUTH HOLM /s/.

My commission expires June 30, 1949.

A28 *Supporting affidavit of*
Leland Olds, Chairman, Federal Power Commission

37764

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

A29 In the United States District Court
For the District of Columbia

37764

UNITED STATES OF AMERICA, PLAINTIFF,

v.

UNITED MINE WORKERS OF AMERICA, ET AL., DEFENDANTS

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

CITY OF WASHINGTON,
District of Columbia, ss:

LELAND OLDS, being duly sworn, deposes and says:

I am the Chairman of the Federal Power Commission, the regulatory Commission created under the Federal Power Act to have jurisdiction over, among other things, electric utility systems engaged in interstate commerce. Under Section 202 (c) of that Act the Commission is given the power during the continuance of war or whatever an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of such energy, or facilities for the generation or transmission of such energy, or of fuel or water for generating facilities, or other causes to require temporary connections in such generation, delivery, interchange, or transmission of electric energy as in the Commission's judgment will best meet the emergency and serve the public's interest.

Any interruption of the production of bituminous coal in the United States would undoubtedly bring about an emergency in the United States calling for restrictive measures to protect the supply of electric energy used in homes, commercial enterprises and industry, so that services for the protection of public health and safety, hospitals, food processing, and other essential community services may be protected.

A30 At the present time electric utility systems have an average of about 60 days' supply of coal for the generation of power. This supply is well below the amount such systems maintain in normal times but due to recent conditions such systems have not been able

to accumulate their normal supply of fuel. In the north central region of the United States 80% of electric energy is generated from coal; in the northeastern region 70% of the power is generated from coal; approximately six-sevenths (6/7) of all power is generated from bituminous coal.

Apart from this ordinary dependence upon coal as a source of electric energy there is at present a greater demand than ever for electric energy, greater even than during the war years. The demand during the past two weeks, for example, has been higher than the demand during the peak of war activities. This increased demand presents a virtual emergency in itself which is at present straining the capacity of the electric industry to meet.

In addition the winter season of peak demands is now being approached and may be expected to be reached the latter part of December. Accordingly, in the normal course of events it should be anticipated that when the winter peak is reached this year the electric industry will be faced with the highest demands ever made upon it at any time.

When the production of coal was interrupted in April 1946, continuing into the month of May 1946, the supply of coal held by electric utility systems was approximately equivalent to their present supply. At that time it was found necessary to recommend curtailments of electric service after the walkout had continued for a period of about 30 days and there was approximately a 30-day supply on hand. Drastic curtailment orders were actually issued in Indiana and Illinois, and curtailment orders in other states were contemplated. If the interruption of production had continued longer than it
A31 did very serious curtailment would have been necessary throughout all the areas where coal was used for the generation of electric power.

In cases where curtailment was directed, industrial and commercial use was restricted to the equivalent of one day a week and in most cases this practically caused a complete shut-down. If the previous interruption had continued for a longer period, it would have been necessary in such cases to practically eliminate all industrial and commercial use and to go into what was to be considered the final stage of restriction when the use of electric energy would have been entirely prohibited except for public health and safety, hospitals, food processing and other essential community services.

If the presently threatened interruption of coal production occurs, the situation will be considerably worse by reason of the fact that the present season of the year makes the results much more disastrous. At the time of the April and May 1946 interruption, the winter fuel demands had ended and a period was being reached when competition with the fuel demands of homes, institutions, and the like were diminishing to the lowest point. With fullest consideration being given to alternative types of fuel, all of which were carefully studied and examined during the period of the last emergency, there is no way of providing adequate substitutes which would avoid the severe curtailments indicated above.

The presently threatened interruption soon would disrupt practically all electric systems east of the Mississippi River. It would certainly bring all industries dependent on those systems to a standstill,

and seriously endanger not only our entire national economy but the health and welfare of millions of citizens.

With the seasonally reduced demands for coal which existed
A32 at the time of the last coal emergency, it appeared that in any case where there was a complete exhaustion of coal supply the generating company could not resume its normal supply of energy until 12 or 14 days after actual resumption of mining. If a similar situation were to result during the coming winter months the period for resumption would necessarily be longer. Any interruption resulting in either a complete or partial depletion of supply of coal on hand necessarily affects generation activities and results in irreparable damage.

LELAND OLDS /s/

Sworn to before me this 18th day of November 1946.

[SEAL] BERNICE P. STONE,
Notary Public.

A33 *Supporting affidavit of James A. Crabtree, Acting Surgeon General, Public Health Service*

37764

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

A 34 In the United States District Court for the District of Columbia 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA ET AL., DEFENDANTS

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

CITY OF WASHINGTON,
District of Columbia, ss:

JAMES A. CRABTREE, being duly sworn, deposes and says: I am Acting Surgeon General of the United States Public Health Service, and I make this affidavit at the request of the Department of Justice to set forth the probable effect upon the public health that might reasonably be expected to accrue from the threatened interruption in production of coal.

Among public health authorities, it is the generally accepted opinion, supported by a substantial body of scientific data, that, for purposes of health and comfort during the cold winter season, the optimum range of temperatures to be maintained in residences and other living quarters is, under appropriate conditions of humidity, from 60 degrees to 70 degrees Fahrenheit. Temperatures higher than 70 degrees may be required to maintain health and to protect the life of certain individuals and under certain circumstances.

In the event that production of coal in the United States is interrupted during the coming winter months to the point where the homes, hospitals, public-service facilities, such as public water supply and sewage-disposal systems, and essential health and medical
A 35 supply industries, now relying upon coal a source of heat,

and power cannot obtain such heat and power, I am of the opinion that the public health of the United States would be seriously jeopardized.

To the extent that other fuels and sources of power are not available, coal is absolutely indispensable for the continued operation and maintenance of all institutions for the care of the sick, of such services as public water supplies and sewage-disposal systems, and of those enterprises devoted to the manufacture and distribution of drugs and other commodities essential for the protection of health. A disruption of such institutions, services, and enterprises, particularly at a time when healthful conditions of temperature could not be maintained in individual homes, would have a disastrous and irreparable effect upon the health and welfare of the nation.

JAMES A. CRABTREE (S)

Subscribed and sworn to before me this 18th day of November 1946.

[SEAL] MARY M. REPETTI (S),
Notary Public in and for Wash., D. C.

My Comm. expires 12–1–49.

A36 *Support Affidavit of J. M. Johnson, Director of the Office of Defense Transportation*

37764

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

A37 AFFIDAVIT OF J. M. JOHNSON, DIRECTOR OF THE OFFICE OF DEFENSE TRANSPORTATION

37764

Filed Nov. 18, 1946, Charles E. Stewart, Clerk.

UNITED STATES OF AMERICA,
District of Columbia, ss:

J. M. Johnson, being first duly sworn, upon oath deposes and says:

He is a member of the Interstate Commerce Commission and the duly appointed, qualified and acting Director of the Office of Defense Transportation and, as such, maintains his office and official residence in the City of Washington, District of Columbia. In his official capacity he is familiar with the domestic transportation facilities of the Nation and the needs thereof, and, in particular, the needs of the common carriers by railroad in the United States (hereinafter referred to as "railroads") with respect to bituminous coal used by them in the performance of their public duties as common carriers of passengers and freight.

At the date hereof there are approximately 141 Class I railroads (i. e. having annual operating revenues above $1,000,000) operating in the United States, and more than 600 railroads of all classes. About 80 percent of the locomotives of these railroads depend upon bituminous coal for fuel to provide motive power. Approximately 25 percent of the bituminous coal production of the United States is consumed by these railroads in providing common-carrier service.

At the present time, approximately 75 percent of the freight traffic in the United States is transported on railroads. Moreover, other

forms of public transportation—air, highway, and water—are
A38 primarily dependent upon railroad transportation for their fuel to permit their continued operation. Furthermore, in many cases where railroads are powered by electrical energy, they receive their power from steam-generated plants requiring coal as a fuel. Additionally, in some cases, manufacturers of oil and distillates for use in powering diesel locomotives, use coal as a fuel in their refining processes.

Based on the consumption of coal by the railroads as of November 1, 1946, they now have on hand in stock piles an average of 30 days' supply; ten railroads have actually less than a 10 days' supply of coal on hand, while six railroads have a coal supply ranging from 10 to 15 days.

At the present time, railroads are in their seasonal peak loadings, requiring the movement of more trains and heavier trains than at any other season of the year. The present volume of freight being transported by the railroads is heavier than at any period since 1930. The average weekly carloadings of the railroads for the six weeks' period ending November 9, 1946, was approximately 919,000 cars. This figure exceeds any average attained during World War II and is the highest since the year 1930. With the coming of cold weather and a continuation of peak traffic demands, more trains may be necessary because of the necessity of reducing tonnage on individual trains due to winter conditions. There is a backlog of several hundred thousand carloads of freight to be moved, including a large quantity of grain for domestic consumption and for export under the Nation's relief program, steel, materials for housing, livestock, and other commodities, which are being delayed because of a shortage in the car supply. The railroads are now contending with a coal
A39 production which is being produced at the rate of about 650,000,000 tons per annum. This exceptionally heavy production is occasioned by an attempt to produce in a ten-month period the normal consumption of a calendar year; this, due to a previous stoppage during 1946 of approximately 60 days in coal-mining operations. Should there be a further stoppage of coal-mining operations at this time it would have the effect of adding an intolerable burden on the railroads when mining operations were resumed and industries generally sought to reestablish normal inventories of fuel.

Continued operation of the railroads in the United States depends on their ability to continue receiving coal. Failing to receive a continuous supply of coal, restrictive action will become immediately necessary in order to extend the present fuel supply for as long a period as possible and to continue the transportation of necessities. By reason of the threatened interruption in the production of bituminous coal, the Office of Defense Transportation has issued an order, effective November 24, 1946; reducing passenger-train mileage performed by coal-burning steam locomotives by 25 percent. Consideration is now being given by the Office of Defense Transportation to restricting freight transportation. The first restriction to be issued, as soon as conditions warrant it, will be the elimination of all nonessential traffic. This will include all export freight to foreign countries, including Canada and Mexico, except food, clothing, and medicines. Additional restrictions, in the event of a stoppage of coal pro-

duction, will be imposed in the light of the quantity of coal that
A40 is allocated to the railroads by the Solid Fuels Administration for War under its priority regulations,

[s] J. M. JOHNSON.

Subscribed and sworn to before me this 18 day of November 1946.

[SEAL] [s] LILLIAN L. COOLEY,
Notary Public.

In the District Court of the United States
for the District of Columbia

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS.

Memorandum on behalf of the United States in support of application for a temporary restraining order and preliminary injunctive relief

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

In the District Court of the United States
for the District of Columbia

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Memorandum on behalf of the United States in support of application for a temporary restraining order and preliminary injunctive relief.

PRELIMINARY STATEMENT

This is an action brought by the United States of America, in its sovereign capacity, against the defendant United Mine Workers of America and the defendant John L. Lewis, president of the United Mine Workers of America.

The purpose of this action is to obtain a declaration by this Court that the defendants neither had nor have any right to issue a notice purporting unilaterally to terminate the so-called "Krug-Lewis" agreement, now in effect at the bituminous coal mines in the possession of the United States, and that the issuance of such a notice by defendants, or a declaration that there is no existing contract in effect at those mines, is unlawful and of no force. In addition, plaintiff asks that, pending final determination of the issues in this cause, the Court forthwith issue a temporary restraining order and a preliminary

injunction in the manner and form set forth in the prayer
1 of the complaint, in order to prevent a frustration of the relief ultimately sought in this proceeding.

2 The facts involved in this controversy and the legal bases for the relief here requested are set forth in full in the complaint. In substance, the defendants contend that they have the right, by unilateral notice, to terminate the Krug-Lewis agreement entered into by the defendant John L. Lewis on their behalf with the Secretary of the Interior acting as Coal Mines Administrator on behalf of the United States; whereas, on the other hand, the United States contends that the Krug-Lewis agreement remains effective for the entire period of Government possession, except insofar as it may be modified by mutual consent or by order of the National Wage Stabilization Board issued pursuant to Section 5 of the War Labor Disputes Act; that the defendants neither had nor have the right by unilateral notice to terminate the agreement; and that the notice given by the defendant John L. Lewis on November 15, 1946, purporting unilaterally to terminate the agreement on November 20, 1946, is unlawful and of no force or effect.

Plaintiff asserts that the notice of November 15, 1946, purporting to terminate the Krug-Lewis agreement, is unlawful for the following reasons:

(1) It constitutes a breach of the obligations assumed by the defendants under the Krug-Lewis agreement for the period of Government possession;

(2) The defendants have thereby coerced, instigated, induced, and encouraged the mine workers employed in the bituminous mines in the Government's possession to interfere by strike, slow-down, and other interruptions, with the operation of those mines; and

3 (3) The defendants have thereby interfered with the sovereign functions of the United States of America exercised for the general welfare, and necessary to insure operation of the mines in the interest of the war effort and to preserve the economic structure in the present emergency.

The complaint alleges that the action of the defendants in issuing the notice of November 15, 1946, and in permitting it to continue outstanding, threatens to result in irreparable injury to the people of the United States, and that unless this Court intervenes and grants the relief prayed for herein, a national catastrophe, disastrous to the health, safety, and welfare of the Nation and the national economy, will result.

4 I. THE DEFENDANTS HAVE NO POWER, BY UNILATERAL NOTICE, TO TERMINATE THE KRUG-LEWIS AGREEMENT; AND THE NOTICE OF NOVEMBER 15, 1946, ISSUED BY THE DEFENDANT JOHN L. LEWIS, PURPORTING TO TERMINATE THE KRUG-LEWIS AGREEMENT, CONSTITUTES AN UNLAWFUL BREACH OF THE SAID KRUG-LEWIS AGREEMENT.

The Krug-Lewis agreement "covers for the period of Government possession the terms and conditions of employment in respect to all mines in Government possession which were as of March 31, 1946, subject to the National Bituminous Coal Wage Agreement, dated April 11, 1945." The Krug-Lewis agreement revived the terms and

conditions of the terminated National Bituminous Wage Agreement dated April 11, 1945, "except as amended and supplemented" in the Krug-Lewis agreement.

The National Bituminous Wage Agreement provided in Section 15 as follows:

> 15. This agreement, dated this 11th day of April 1945, shall be effective as of April 1, 1945, and shall continue in effect hereafter subject to the conditions and termination as herein provided. At any time prior to April 1, 1946, in the event a significant change occurs in the government wage policy, either party shall have the right to request negotiations on general wage rates.
>
> At any time after March 1, 1946, either party may give ten days' notice in writing of a desire for a negotiating conference upon the matters outlined in said notice. The other party agrees to attend said conference. At the end of fifteen days after the beginning of such negotiating conference, either party may give to the other a notice in writing of the termination of this agreement, to be effective five days after the receipt of such notice.

It is the defendants' contention that these provisions of Section 15 have been carried over by the Krug-Lewis agreement, and that, therefore, the defendants have the right to terminate the Krug-Lewis agreement pursuant thereto. This contention, we submit, is clearly without merit.

Section 15 is essentially a termination provision, which sets forth the procedure for modification and termination of the April 11, 1945, agreement after expiration of a period of at least one year. Such a provision was necessary in that agreement for the obvious reason that it had no other termination date. The Krug-Lewis agreement, however, specifically provides that it covers the terms and conditions of employment "for the period of government possession." Thus the Krug-Lewis agreement has an express provision covering its duration and a definite termination date, which has not yet arrived. Accordingly Section 15 was in fact and in substance "amended and supplemented" by the Krug-Lewis agreement and was not in any sense carried over for the period of Government possession.

This conclusion is reenforced by an examination of the provisions of the War Labor Disputes Act, under which possession of the mines was taken by the United States. The provisions of that Act contemplate, first, that the operations of the mines in the Government's possession shall continue without interruption; and second, that there shall be an equitable approach to the problem of fixing terms and conditions of employment in such mines during the period of Government possession. They set forth in detail the method whereby changes in terms and conditions of employment at the Government-possessed mines may be effected; Section 5 specifically provides that after possession has been taken by the Government, "the Government agency operating such plant, mine, or facility, or a majority of the employees of such plant, mine, or facility, or their representatives may apply to the National War Labor Board (now its successor agency, the National Wage Stabilization Board) for a change in wages or other terms or conditions of employment in such plant, mine, or facility." The Krug-Lewis agreement was entered into, and must,

of course, be interpreted and applied, in the light of the objectives of the Act. In accordance with the provisions of Section 5, the National Wage Stabilization Board, on May 31, 1946, issued an order with the approval of the President, in substance promulgating the terms and conditions of employment agreed upon in the Krug-Lewis
6 agreement. To accept the defendants' contention that they can now unilaterally terminate the agreement would be to ignore the congressional policy and program thus plainly enunciated in the War Labor Disputes Act.

Nor can any other view reasonably be taken. The agreement of April 11, 1945, by its terms, had stability, since, pursuant to Section 15, it endured for a period of at least one year. To accept the defendants' contention as to the meaning of the Krug-Lewis agreement would, on the other hand, render that agreement unstable since it would permit termination of that agreement within 30 days after its execution. It is incredible that the defendants and the Coal Mines Administrator would enter into an agreement expressly for "the period of government possession," with the intention that it might be upset by either party as a matter of right, within 30 days.

Moreover, that the Krug-Lewis agreement could not contemplate that the defendants might, by unilateral notice, terminate the agreement, appears clear from an analysis of the significance of the notice of termination, when considered in the light of Section 6 of the War Labor Disputes Act. As appears from the complaint and the affidavits attached thereto, a notice or declaration by the defendants that the Krug-Lewis agreement is terminated, constitutes, in fact and in effect, a call to strike, inasmuch as it has been a long established policy, consistently followed by the defendants, that members of the Union should work only when there is in effect a contract to which the Union is a party. Therefore, the defendants when they assert that the Krug-Lewis agreement was designed to give them the right to terminate the agreement unilaterally, in fact say that the Coal Mines Administrator and the defendants contracted to afford to them the right to take action specifically made unlawful by the provisions of Section 6 of the War Labor Disputes Act, as more fully appears below. Such a contention obviously cannot be sustained.

7 II. THE NOTICE OF NOVEMBER 15, 1946, PURPORTING TO TERMINATE THE KRUG-LEWIS AGREEMENT, IS IN CONTRAVENTION OF THE PUBLIC POLICY DECLARED BY THE CONGRESS, OBSTRUCTS AND INTERFERES WITH THE EXERCISE OF SOVEREIGN FUNCTIONS OF THE UNITED STATES, AND IS CONSEQUENTLY UNLAWFUL

The action of defendants purporting to effect, by unilateral notice, the termination of the Krug-Lewis agreement during the period of Government possession, is unlawful not only because it constitutes a breach of the obligations assumed by the defendants when they entered into that agreement, but also because it contravenes the public policy declared by the Congress, and because it obstructs and interferes with the exercise of sovereign functions of the United States.

Section 6 of the War Labor Disputes Act provides in part as follows:

"(a) Whenever any plant, mine, or facility is in the possession of the United States, it shall be unlawful for any person (1) to coerce, instigate, induce, conspire with, or encourage any person,

to interfere, by lock-out, strike, slow-down, or other interruption, with the operation of such plant, mine, or facility, or (2) to aid any such lock-out, strike, slow-down, or other interruption interfering with the operation of such plant, mine, or facility by giving direction or guidance in the conduct of such interruption, or by providing funds for the conduct or direction thereof or for the payment of strike, unemployment, or other benefits to those participating therein."

As we have indicated above, the notice of November 15, 1946 constitutes in substance and in effect a call to the mine workers employed at the bituminous coal mines in the Government's possession to cease work at those mines in concert at midnight on November 20, 1946. For, in accordance with the long established policy and practice already referred to, under which the Union members, upon the mere announcement by the defendant Lewis that an existing contract has been voided or terminated, or that no contract exists, have quit their work
8 en masse and have continued to stay out of the mines until the defendant Lewis has announced that a contract again exists, it is plain that the notice of termination of November 15, 1946, will have just such a result and that the defendants, in issuing that notice, were well aware of its inevitable consequences. In issuing the notice, therefore, and in continuing to permit the notice to remain outstanding, the defendants coerce, instigate, induce, and encourage the mine workers to interfere by strike and other interruptions with the operation of the mines in the Government's possession. That the acts so declared unlawful may be punishable as crimes does not detract from the Government's right to procure, in a court of equity, a declaratory judgment of their unlawful character and an injunction restraining their performance. See e. g. *In re Debs*, 158 U. S. 564.

In addition to the fact that the defendants' action here complained of contravenes the public policy clearly enunciated by the Congress in the War Labor Disputes Act, there is the doctrine of long standing that the Federal Government is entitled to judicial protection of its rights lawfully to exercise its sovereign functions without interference and obstruction. *In re Debs, supra; United States* v. *Frank J. Hayes, et al.* (D. Ind., November Term 1919, Equity No. 312, unreported); cf. *United States* v. *Railway Employees Department*, 283 Fed. 479 (N. D. Ill.), and sec. 286 Fed. 228 (N. D. Ill.), and 290 Fed. 978 (N. D. Ill). In the *Debs* case, the Supreme Court upheld as valid an injunction issued against officers of a labor union restraining a strike against the Pullman Company on the ground that such an injunction was justified to remove obstructions to the exercise of the Government's powers in connection with the regulation of interstate commerce and the transmission of the mails. Although some may question the present vitality of the holding in the *Debs* case, there can be no question that the basic doctrine which it enunciated is valid and applicable here. For here the Government, in the exercise of its vital war powers, has taken possession of the coal mines, and is engaged in the control and operation of those mines, and it asks the Court to prevent by injunction and to declare unlawful, acts interfering with and obstructing the effective exercise of such essential sovereign powers. The denial of such relief would frustrate the powers conferred by the Constitution and the Congress on the President to seize properties vital to the war and reconversion efforts.

9 III. THIS COURT HAS POWER TO GRANT INJUNCTIVE RELIEF PENDING THE FINAL DETERMINATION OF THE ISSUES PRESENTED BY THIS CASE

We believe that it has been conclusively demonstrated that the notice of November 15, 1946, is, and that any such notice or declaration which defendants may hereafter issue would be, unlawful. In view of that circumstance, in light of the substantial controversy which plainly exists between plaintiff and the defendants, and in the face of the irreparable injury threatened to plaintiff and the public interest, as shown below, plaintiff is clearly entitled to the declaratory judgment prayed for in the complaint. *Oil Workers Intern. Union* v. *Texoma Natural Gas Co.*, 146 F. (2d) 62 (C. C. A. 5), certiorari denied 65 S. Ct. 1017.

The United States here also requests the issuance of a temporary restraining order and a preliminary injunction pending the final determination of the issues in this case. The power of this Court to grant plaintiff such injunctive relief is equally clear. We have already noted the availability of the injunctive process to protect the exercise of the sovereign functions from obstruction and interference. And the power of a court to enjoin breaches of contract is likewise traditional. *Commercial Telegraphers Union, AFL* v. *Western Union Telegraph Co.*, 53 F. Supp. 90 (D. D. C.); *United States* v. *American T. and T. Co.*, 57 F. Supp. 451, affirmed sub. nom. *Hotel Astor* v. *United States*, 325 U. S. 837.

Nor are the Government's rights to injunctive protection in any way affected by the provisions of the Norris-LaGuardia Act, 29 U. S. C. Secs. 101 et seq. The Norris-LaGuardia Act marked the culmination of a fifty-year controversy as to the right of workers in private employ to organize and by collective means to obtain acceptable terms and conditions of employment. Specifically, it removed the injunctive process from the area of labor combat between employer
10 and employee. Cf. H. Rept. 669, 72d Cong., 1st Sess., pp. 3 ff.; *Milk Wagon Drivers' Union* v. *Lake Valley Farm Products*, 311 U. S. 91, 102; *Virginian Railway* v. *System Federation*, 300 U. S. 515, 563; *Columbia River Packers Association* v. *Hinton*, 315 U. S. 143; 75 Cong. Rec. 4619, 5464, 5470, 5478, 5488. In no sense, however, does the Norris-LaGuardia Act purport to deal with the problem here presented: the invocation by the United States of the equitable powers of the courts to prevent irreparable injury to the interests of the people of the United States pending a peaceful judicial determination of a disputed legal problem.

Initially, it should be observed that the Norris-LaGuardia Act does not, in specific terms or by necessary implication, apply to the United States, and, accordingly, on traditional grounds of construction, the Government would not be bound by its provisions. *Dollar Savings Bank* v. *United States*, 19 Wall. 227; *Guarantee Title and Trust Company* v. *Title Guarantee Company*, 224 U. S. 152; Black, *Interpretation of Laws* (2d Ed.), p. 94. In fact, in the absence of a clear legislative purpose to limit the Government's use of the equity powers of the courts for the general welfare, a provision in the Norris-LaGuardia Act specifically reserving to the United States its power to

obtain injunctive protection would merely have been declaratory of an already existent public policy. Cf. *Jewish Hospital of Brooklyn* v. *John Doe*, 252 App. Div. (N. Y.) 581, 586. The legislative history of the statute shows no such limiting purpose. On the contrary, it is quite clear that the Act was not intended to limit or affect the sovereign powers of the United States or to curtail the jurisdiction of the Federal courts when invoked by the Government in support and protection of its sovereign functions.

11 Representative Michener, a member of the committee which reported the bill which became the Norris-LaGuardia Act, stated, in his description of the measure (75 Cong. Rec. 5464):

> "* * * I do not believe that the enactment of the bill into law will take away from the Federal Government any rights which it has under existing law, to seek and obtain injunctive relief where the same is necessary for the functioning of the Government."

Similarly, Representative LaGuardia, the sponsor of the legislation in the House, stated that he did not see any possible way in which "* * * the United States can be brought in under the provisions of the bill. * * *" 75 Cong. Rec. 5640.

It is true that some courts have held that the United States may not, because of the limitations of the Norris-LaGuardia Act, obtain injunctions to restrain labor union action in cases involving or growing out of *bona fide* labor disputes affecting private employers and their employees. *United States* v. *American Federation of Musicians*, 318 U. S. 741, affirming 47 F. Supp. 304 (N. D. Ill.); *United States* v. *Weirton Steel Co.*, 7 F. Supp. 255 (D. Del.); cf. *Columbia R. Co.* v. *Hinton*, 315 U. S. 143, 145. The controversy stated in the complaint here, however, is plainly beyond the scope of those decisions, as the legislative history of the Norris-LaGuardia Act itself shows. Here there is not and cannot be a *bona fide* labor dispute necessary to call the Norris-LaGuardia Act into play. For, the sovereign, in the exercise of its functions, can at no time be held to be engaged in a labor dispute with private persons.[1] Cf. *Petrucci* v. *Hogan*, 27 N. Y.

12 Supp. (2d) 718 (Sup. Ct. N. Y.); *Society of the New York Hospital* v. *Hanson*, 185 Misc. 937 (Sup. Ct. N. Y.); *Jewish Hospital of Brooklyn* v. *Doe*, *supra*.

The United States appears in this proceeding for the purpose of obtaining a judicial declaration on a disputed contract question—a question which exists only by virtue of the exercise by the Government of its sovereign emergency and welfare powers in seizing the coal mines. The very purpose of the seizure was to prevent the irreparable injury to the public which inevitably flows from a work stoppage at the mines. The prayer for interim injunctive relief now before this Court is solely for the purpose of continuing the protection of the public interest initially obtained by the seizure of the mines until at least such time as the disputed question of law can be determined. In no sense is this an attack upon the right of labor to organize or to bargain collectively, nor is this an attempt to use judicial power in the area of economic strife which exists between employer and employee. The entire case falls well outside the area designed to be covered by the Norris-LaGuardia Act.

13 IV. A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION SHOULD BE ISSUED ON THE FACTS IN THE COMPLAINT AND THE MOVING AFFIDAVITS TO PRESENT IRREPARABLE INJURY

It has been shown by verified complaint and affidavits that the defendants' notice of November 15, 1946, purporting to terminate the Krug-Lewis agreement, is, according to a now familiar pattern, the signal for invocation of the coal miners' traditional practice of walking out of the mines when the defendant Lewis asserts that there is no contract. Accordingly, a concerted work stoppage at most of the mines in Government possession is in prospect, and the general result of such a walk-out in late November at the outset of winter is easily foreseeable.

The coal strike of April and May 1946 occurred after the demands of winter had ceased, but, nevertheless, the lesser effects of a walk-out then give clear indications of the greater impact to be expected from the present threat.

The moving affidavits show that a great many homes, many public institutions, substantial industries, a substantial portion of our electric utility systems, and a large amount of domestic and foreign shipping are absolutely dependent upon coal. It appears that only limited supplies of coal are on hand, ranging in some cases from a few days' supply to sixty days in other cases, and that interruption of supply will soon disrupt our entire national economy, endanger public health and welfare, create unemployment, cause untold hardships to millions of citizens, cripple industrial production of all kinds, interfere with the operations of our armed forces, and prevent shipments to devastated foreign areas which have become so dependent on our help and productivity.

Over 2,200 mines producing bituminous coal will be involved. These produce about 10,500,000 tons of coal per week, or 87% of the nation's entire production of bituminous coal. About half a million tons of this weekly output are currently being shipped overseas.

14 One disastrous effect of a stoppage of coal production appears from the fact that in the north-central states and the north-eastern states, a considerable part of our electric utility systems is dependent upon coal. Industry, public services, commercial business and the public in general are in turn dependent upon those systems. The Chairman of the Federal Power Commission points out in his affidavit that wholly apart from the threatened interruption by the coal mine situation, a virtual emergency already exists in electric services in that the present day demand for electric energy is at a peak exceeding all wartime demands, and that the capacity of those systems is presently strained despite the fact that normal winter demands will soon reach an all time high peak.

The affidavit of the Civilian Production Administrator shows the awful impact threatening our entire national economy in every vital field. He points out that our industrial production is now operating at the highest possible capacity limited only by shortage of critical materials, but that all this progress will be brought to a halt by a miners' walkout. The Administrator points out that the coal strike in the spring of 1946 cost the country close to two billion dollars in

loss of production not counting the loss in wages to over a million workers made idle by that strike. A winter strike in the face of greater activity and higher production is bound to result in a considerably greater loss.

The affidavit of the Chairman of the United States Maritime Commission shows that the threatened walkout of the miners will not only interfere with a substantial amount of shipping of coal in coastwise and foreign trade but will also result in considerable loss of income to the Government in the operation of vessels under Government ownership. The reduction in coal shipments will also lead to the cancellation of a number of bareboat charters and this in turn results in a loss of charter hire. At the same time, this result interferes with the Maritime Commission's endeavors to return vessels to
15 private ownership. It appears that approximately 550 vessels would be involved, and if those vessels were laid up, approximately 25,000 persons would be thrown into unemployment.

The affidavit of the Secretary of the Navy indicates that the threatened walkout is bound to cause serious interference with the presently wide flung operations in the armed forces and will necessarily have an adverse effect upon their effectiveness in the performance of their functions.

Finally, the affidavit of the Acting Surgeon General of the United States Public Health Service points to the importance of maintaining proper temperatures for purposes of health and comfort during the cold winter season, and to the necessity of maintaining adequate temperatures in many cases to protect the health and life of individuals. He refers to the danger to public welfare when homes, hospitals, public service facilities such as public water supply, sewage disposal systems, and essential health and medical and supply industries are unable to obtain coal, the necessary source of heat and power.

Injunctions will issue to give full protection to the public interest. "Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved." *Virginian Railway Company* v. *Federation*, 300 U. S. 515, 552.

From all of the foregoing, it is clear that the threatened interruption of coal production must lead to great and irreparable loss and damage to the public. The Government seizure of the mines was authorized by and carried out specifically to prevent the very situation which is now threatened. The present threat is directly to interfere with a sovereign function and a governmental operation being carried out in the interest of public welfare and safety. The complaint in this case places before the Court the fundamental question as to the alleged right of the defendants unilaterally to terminate the Krug-
16 Lewis agreement. A temporary restraining order and ultimately a preliminary injunction are necessary not only to prevent irreparable harm and great damage to the public interest pending the determination of that question, but also to protect the jurisdiction of the Court and to assure the effectiveness of its decision. If a temporary restraining order is not granted in this action, properly brought to obtain a declaratory judgment to settle the controversy prior to actual interference with rights and relationships, the final decision of

the Court may be rendered nugatory and fruitless even if plaintiff is finally successful.

Respectfully submitted.

TOM C. CLARK,
Attorney General of the United States.
By JOHN F. SONNETT
JOHN F. SONNETT,
Assistant Attorney General.

Attorneys for the United States of America
JOHN F. SONNETT,
Assistant Attorney General.
GEORGE MORRIS FAY,
United States Attorney, District of Columbia.
JOHN FORD BAECHER,
Special Assistant to the Attorney General.
FRANK HAYDEN,
Special Assistant to the Attorney General.
ELLIS LYONS,
Attorney, Department of Justice.
SAMUEL SLADE,
Attorney, Department of Justice.

13 In the District Court of the United States for the District of Columbia

Civil No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA ET AL., DEFENDANTS

Temporary Restraining Order Against Defendants

Filed, Nov. 18, 1946. Charles E. Stewart, Clerk.

This action came on to be heard on the verified complaint of the United States of America, and the affidavits of J. A. Krug, Secretary of the Interior; Robert P. Patterson, Secretary of War; James Forrestal, Secretary of the Navy; J. D. Small, Administrator, Civilian Production Administration; G. H. Helmbold, Managing Director, Ship Operations, United States Maritime Commission; Leland Olds, Chairman, Federal Power Commission; James A. Crabtree, Acting Surgeon General, United States Public Health Service; and J. M. Johnson, Director, Office of Defense Transportation, filed herein, and upon the plaintiff's application for a temporary restraining order against the defendants; and it appearing to the Court that the defendant, the United Mine Workers of America, has given to the Secretary of the Interior a notice dated November 15, 1946, purporting to terminate the so-called Krug-Lewis Agreement dated May 29, 1946, as of 12 o'clock p. m. midnight, November 20, 1946, and it further appearing that said agreement applies to the employment of members of said United Mine Workers of America serving in the bituminous coal mines now in the possession of the United States of

America acting by the Secretary of the Interior, and it further appearing that it is the announced practice of the members of the United Mine Workers of America to refuse to work in the mines while there is no contract in effect with the operator of the mines; and it
14 further appearing that if the purported notice of termination is permitted to remain in effect, the miners may walk out of the mines, and refuse to resume work, and that the resultant stoppage in bituminous coal production will cause great loss and irreparable damage to the plaintiff, and that such stoppage will directly interfere with governmental operations and sovereign functions, and will adversely affect the public interest and will seriously endanger the public welfare and safety, and it further appearing that the action of the defendants may deprive the Court of full and effective jurisdiction over the claim set forth in the complaint, and may impair, obstruct, or render fruitless, the Court's determination of this action;

NOW, THEREFORE, IT IS BY THE COURT this 18th day of November 1946,

ORDERED that the defendants and each of them and their agents, servants, employees, and attorneys, and all persons in active concert or participation with them, be and they are hereby restrained pending further order of this Court from permitting to continue in effect the notice heretofore given by the defendant, John L. Lewis, to the Secretary of Interior dated November 15, 1946; and from issuing or otherwise giving publicity to any notice that or to the effect that the Krug-Lewis Agreement has been, is, or will at some future date be terminated, or that said agreement is or shall at some future date be nugatory or void at any time during Government possession of the bituminous coal mines; and from breaching any of their obligations under said Krug-Lewis Agreement; and from coercing, instigating, inducing, or encouraging the mine workers at the bituminous coal mines in the Government's possession, or any of them, or any person, to interfere by strike, slow down, walkout, cessation of work, or otherwise, with the operation of said mines by continuing in effect the
15 aforesaid notice or by issuing any notice of termination of agreement or through any other means or devices; and from interfering with or obstructing the exercise by the Secretary of the Interior of his functions under Executive Order 9728; and from taking any action which would interfere with this Court's jurisdiction or which would impair, obstruct, or render fruitless, the determination of this case by the Court;

AND IT IS FURTHER ORDERED that this restraining order shall expire at 3 o'clock p. m. on November 27th, 1946, unless before such time the order for good cause shown is extended, or unless the defendants consent that it may be extended for a longer period;

AND IT IS FURTHER ORDERED that plaintiff's motion for preliminary injunction be set down for hearing on November 27th, 1946, at 10:00 o'clock a. m.

/s/ T. ALAN GOLDSBOROUGH, *Justice.*

Signed at 12:50 p. m., November 18, 1946.

(Certified a True Copy by the Clerk of the Court.)

Personally served copy of the within on John L. Lewis. 11/18/46. /s/ W. Bruce Matthews, U. S. Marshal in and for the D. of C. By Charles I Mattingly. /s/ Deputy U. S. Marshal /md/.

District Court of the United States for the District of Columbia

No. 37,764 Civil Action

UNITED STATES OF AMERICA, PLAINTIFF

vs.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSO., AND JOHN L. LEWIS, ETC., DEFENDANTS

I, CHARLES E. STEWART, Clerk of THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA, do hereby certify the annexed to be a true and correct copy of the original summons as it appears of record in the Clerk's Office of said Court in the above-entitled cause.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, this 3rd day of December, 1946.

[SEAL]

CHARLES E. STEWART,
Clerk,
By ANNA M. THOMPSON,
Deputy Clerk.

SUMMONS IN A CIVIL ACTION

[D. C. Form No. 45 Rev.]

District Court of the United States for the District of Columbia,
Civil Division

Civil Action File No. 37,764

UNITED STATES OF AMERICA, PLAINTIFF

vs.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Summons

To the above named Defendants:

You are hereby summoned and required to serve upon TOM C. CLARK, plaintiff's attorney, whose address is Department of Justice, Washington, D. C., an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[SEAL]

CHARLES E. STEWART,
Clerk of Court.
By ANNE W. LYDDANE,
Deputy Clerk.

Date: November 18, 1946.

NOTE.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

No. ——. District Court of the United States —— District of ——, —— Division. —— v. ——. Summons in Civil Action. Returnable not later than days after service.

———— ————,
Attorney for Plaintiff.

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the 18th day of November 1946, I received the within summons and complaint and served a copy of said summons and of the complaint by delivering a copy of said summons and complaint to the within named defendants; United Mine Workers of America, an Unincorporated Association, by personally serving John L. Lewis, President, 11/18/46; and John L. Lewis, personally, 11/18/46.

MARSHAL'S FEES

Travel ---------- $——
Service ---------- 2.00
———
———

W. BRUCE MATTHEWS,
United States Marshal,
By CHARLES I. MATTINGLY,
Deputy United States Marshal.

Subscribed and sworn to before me, a this day of 19 .

[SEAL] ———— ————

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

11 In the United States District Court for the District of Columbia

Civil No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA ET AL., DEFENDANTS

Filed Nov. 21, 1946. Charles E. Stewart, Clerk.

CITY OF WASHINGTON,
District of Columbia, ss:

MICHAEL F. COLASANTO and CHARLES I. MATTINGLY, being first duly sworn, depose and say:

That they at all times herein mentioned were duly appointed and qualified and acting Deputy United States Marshals in and for the District of Columbia, and that on the 18th day of November, at 2:15 o'clock p. m., they personally served on John L. Lewis, individually and as President of the United Mine Workers of America, an unincorporated association, and on the United Mine Workers of America, an unincorporated association, by John L. Lewis, President, at their place of business, the United Mine Workers Building, 900 I Street NW., Washington, D. C., a certified copy of the Restraining Order issued

and signed by the Court in the above entitled cause at 12:30 o'clock p. m., November 18, 1946, a copy of a Memorandum of Law, Points and Authorities filed on behalf of the United States in support of the application for the temporary Restraining Order and for temporary injunctive relief, a copy of the affidavits in support of the prayer for the Restraining Order of J. A. Krug, Secretary of the Interior;
12 James Forrestal, Secretary of the Navy; Robert P. Patterson, Secretary of War; John D. Small, Administrator, Civilian Production Administration; G. H. Helmbold, Managing Director, Ship Operations, United States Maritime Commission; Leland Olds, Chairman, Federal Power Commission; James A. Crabtree, Acting Surgeon General, Public Health Service; and J. N. Johnson, Director, Office of Defense Transportation; and a copy of the Complaint of the United States of America for Declaratory Judgment and Injunctive Relief, with Exhibits A–M, inclusive, attached thereto, all of which were filed in the above entitled cause of November 18, 1946; and that a copy of the Restraining Order so served by them on the defendants is attached hereto and made a part hereof.

CHARLES I. MATTINGLY. /s/
MICHAEL F. COLASANTO. /s/

Subscribed and sworn to before me this 21st day of November 1946.

MARY M. REPETTI, /s/
Notary Public in and for the District of Columbia.

My commission expires on the 1st day of December 1949.

13 In the District Court of the United States for the District of Columbia

Civil No. 37764

UNITED STATES OF AMERICA, PLAINTIFF
v.
UNITED MINE WORKERS OF AMERICA ET AL., DEFENDANTS

Filed Nov. 21, 1946. Charles E. Stewart, Clerk.

Temporary restraining order against defendants

This action came on to be heard on the verified complaint of the United States of America, and the affidavits of J. A. Krug, Secretary of the Interior; Robert P. Patterson, Secretary of War; James Forrestal, Secretary of the Navy; J. D. Small, Administrator, Civilian Production Administration; G. H. Helmbold, Managing Director, Ship Operations, United States Maritime Commission; Leland Olds, Chairman, Federal Power Commission; James A. Crabtree, Acting Surgeon General, United States Public Health Service; and J. M. Johnson, Director, Office of Defense Transportation, filed herein, and upon the plaintiff's application for a temporary restraining order against the defendants; and it appearing to the Court that the defendant the United Mine Workers of America has given to the Secretary of the Interior a notice dated November 15, 1946, purporting to terminate the so-called Krug-Lewis Agreement dated May 29, 1946, as

of 12 o'clock p. m. midnight, November 20, 1946, and it further appearing that said agreement applies to the employment of members of said United Mine Workers of America serving in the bituminous coal mines now in the possession of the United States of America acting by the Secretary of the Interior, and it further appearing that it is the announced practice of the members of the United Mine Workers of America to refuse to work in the mines while there is no contract in effect with the operator of the mines; and it further appearing
14 that if the purported notice of termination is permitted to remain in effect, the miners may walk out of the mines, and refuse to resume work, and that the resultant stoppage in bituminous coal production will cause great loss and irreparable damage to the plaintiff, and that such stoppage will directly interfere with governmental operations and sovereign functions, and will adversely affect great public interest, and will seriously endanger the public welfare and safety, and it further appearing that the action of the defendants may deprive the Court of full and effective jurisdiction over the claim set forth in the complaint, and may impair, obstruct, or render fruitless, the Court's determination of this action;

NOW, THEREFORE, IT IS BY THE COURT this 18th day of November, 1946,

ORDERED that the defendants, and each of them and their agents, servants, employees and attorneys, and all persons in active concert or participation with them, be and they are hereby restrained pending further order of this Court from permitting to continue in effect the notice heretofore given by the defendant, John L. Lewis, to the Secretary of Interior dated November 15, 1946; and from issuing or otherwise giving publicity to any notice that or to the effect that the Krug-Lewis Agreement has been, is, or will at some future date be terminated, or that said agreement is or shall at some future date be nugatory or void at any time during Government possession of the bituminous coal mines; and from breaching any of their obligations under said Krug-Lewis Agreement; and from coercing, instigating, inducing, or encouraging the mine workers at the bituminous coal mines in the Government's possession, or any of them, or any person, to interfere by strike, slow-down, walk-out, cessation of work, or otherwise, with the operation of said mines by continuing in effect the aforesaid notice or by issuing any notice of termination of agreement
15 or through any other means or device; and from interfering with or obstructing the exercise by the Secretary of the Interior of his functions under Executive Order 9728; and from taking any action which would interfere with this Court's jurisdiction or which would impair, obstruct, or render fruitless, the determination of this case by the Court.

15 AND IT IS FURTHER ORDERED that this restraining order shall expire at 3 o'clock p. m. on November 27th, 1946, unless before such time the order for good cause shown is extended, or unless the defendants consent that it may be extended for a longer period;

AND IT IS FURTHER ORDERED that plaintiff's motion for preliminary injunction be set down for hearing on November 27th, 1946, at 10:00 o'clock a. m.

/s/ T. ALAN GOLDSBOROUGH,
Justice.

Signed at 12:50 p. m., November 18, 1946.
(Certified a True Copy by the Clerk of the Court.)

1 In the District Court of the United States for the District of Columbia

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed Nov. 21, 1946. Charles E. Stewart, Clerk.

Petition for rule to show cause

To the Honorable T. Alan Goldsborough, Justice of the United States District Court for the District of Columbia:

Comes now the complainant, the United States of America, by Tom C. Clark, its Attorney General, and files this petition herein and shows:

1. That on the 18th day of November 1946, the said United States of America filed in this court a complaint in which the said United States of America was plaintiff and the United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as president of the United Mine Workers of America, were defendants, praying that a preliminary injunction and a temporary restraining order issue against said defendants and that said court on November 18, 1946, issued a temporary restraining order which is still in full force and effect and has been at all times since that date.

2. That a certified copy of said restraining order was duly published and served upon each and all of the above-named defendants in said action in the District of Columbia by Acting Deputy
2 United States Marshals Charles I. Mattingly and Michael F. Colasanto, all prior to the date of the commission of the violation of the temporary restraining order hereinafter referred to, as will more fully appear from the return of the United States Marshals of this court on file in said action, reference being made thereto and to all papers, files, and proceedings in said action.

3. Your petitioner further shows the court and alleges upon information and belief that since the issuance and service of said restraining order aforesaid, and with full knowledge thereof and in defiance of the terms of said order, that said United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as president of the United Mine Workers of America, have wilfully, wrongfully, and deliberately disobeyed and violated the said temporary restraining order, all of which more fully appears from the affidavit of N. H. Collisson which is hereto attached and made a part hereof; that this application is made for the purpose of securing a rule against the parties above named to show cause why they should not be punished as and for a contempt of this Honorable Court and for such further orders in the premises as are just and proper.

Wherefore, your petitioner prays that this court issue a rule as submitted herewith against the said United Mine Workers of Amer-

ica, an unincorporated association, and John L. Lewis, individually and as president of the United Mine Workers of America.

Dated November 21, 1946.

TOM C. CLARK,
Attorney General.

By /s/ JOHN F. SONNETT,
Assistant Attorney General.

3 In the District Court of the United States for the District of Columbia

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF, *v.* UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed Nov. 21, 1946. Charles E. Stewart, Clerk.

Affidavit of Captain N. H. Collisson, U. S. N. R.

N. H. COLLISSON, being duly sworn, deposes and says:

1. I am now and have been since October 1, 1946, Coal Mines Administrator acting under authority delegated by the Secretary of the Interior of the United States pursuant to Executive Order No. 9728 dated May 21, 1946. In this capacity I am charged with the operation and administration of the bituminous coal mines in the possession of the United States.

2. On November 18, 1946, the United States of America commenced a civil action in the United States District Court for the District of Columbia by the filing of a verified complaint against the above-named defendants, praying for a declaratory judgment and for preventive relief by way of a temporary restraining order and a preliminary injunction. On November 18, 1946, the Court issued a temporary restraining order against the defendants in said case. Copies of said verified complaint, affidavits in support of the issuance of a temporary restraining order and said temporary restraining order are attached hereto and made a part hereof.

4 3. On information and belief, a certified copy of the temporary restraining order, together with copies of the verified complaint, including and embracing plaintiff's prayer and motion for a temporary restraining order, and the supporting affidavits, were served on the defendants at 2:15 p. m., on November 18, 1946, as shown by the return of the United States Marshal filed in this action and the annexed affidavit of service.

4. On information and belief at no time after the service of the aforesaid temporary restraining order has the defendant Lewis or the defendant, United Mine Workers of America, withdrawn the notice of alleged termination of the Krug-Lewis agreement heretofore given by said defendants to the Secretary of Interior dated November 15, 1946.

5. On information and belief, on or about November 18, 1946, there commenced at said coal mines a gradual walk-out, strike, cessation of

and refusal to work by the members of defendant Union, which increased daily until 12 o'clock midnight of November 20, 1946. Since that hour and up to 1:30 p. m., November 21, 1946, there has occurred a walk-out, strike, cessation of and refusal to work by substantially all of the members of the defendant Union employed at coal mines in the possession of the Government which mines have produced in the past during Government possession of the mines, and prior to November 18, 1946, approximately 87% of the bituminous coal production of the nation.

6. On information and belief, said defendants have violated the temporary restraining order issued by this Court on November 18, 1946, in said action, and are in contempt of this Court.

(1) In that, since 2:15 p. m. on November 18, 1946, and at all times since and up to 1:30 p. m. today, November 21, 1946, the defendants and each of them have permitted to continue in effect the notice heretofore given by the defendant John L. Lewis to the Secretary of Interior dated November 15, 1946.

(2) By breaching their obligation, under the Krug-Lewis agreement, to continue said agreement in effect during the period of Government possession and operation of said mines.

5 (c) By instigating, inducing, and encouraging the workers at said mines to interfere, by strike, slow-down, walk-out, and cessation of work, with the operation of said mines by continuing in effect the notice of November 15, 1946, purporting to terminate the Krug-Lewis Agreement.

(d) By permitting to remain outstanding the aforesaid notice of November 15, 1946, purporting to terminate the so-called Krug-Lewis Agreement, thereby completing the calling of a strike by said defendants and completing the instigation, inducement, and encouragement by said defendants, of the mine workers at the bituminous coal mines in the Government's possession to interfere, by strike, slow-down, walk-out and cessation of work, with the operation of said mines.

(e) By failing to withdraw the notice of November 15, 1946, purporting to terminate the Krug-Lewis Agreement, and by failing to announce to and notify the members of defendant union employed at said mines that said notice of November 15, 1946, was withdrawn, and by failing to notify said members of defendant Union that there is in force and in effect an agreement or contract between the defendant Union and the United States of America, that is, the so-called Krug-Lewis Agreement, the said defendants instigated, induced, and encouraged the workers at said mines to interfere by strike, slow-down, walk-out, and cessation of work, with the operation of said mines, thereby interfering with and obstructing the exercise by the Secretary of the Interior of his functions under Executive Order No. 9728 and with the performance of other governmental functions.

6 (f) By reason of the violation of the Temporary Restraining order by said defendants as set forth above, the said defendants have interfered with this Court's jurisdiction.

[SEAL] /s/ CAPTAIN N. H. COLLISSON, U. S. N. R.

Subscribed and sworn to before me this 21st day of November 1946.

MARY M. REPETTI /s/

WASHINGTON, D. C.

My commission expires Dec. 1, 1949.

A2 In the District Court of the United States for the District of Columbia

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, ET AL., DEFENDANTS

Filed Nov. 21, 1946. Charles E. Stewart, Clerk. 37764

Temporary Restraining Order Against Defendants

This action came on to be heard on the verified complaint of the United States of America, and the affidavits of J. A. Krug, Secretary of the Interior; Robert P. Patterson, Secretary of War; James Forrestal, Secretary of the Navy; J. D. Small, Administrator, Civilian Production Administration; G. H. Helmbold, Managing Director, Ship Operations, United States Maritime Commission; Leland Olds, Chairman, Federal Power Commission; James A. Crabtree, Acting Surgeon General, United States Public Health Service; and J. M. Johnson, Director, Office of Defense Transportation, filed herein, and upon the plaintiff's application for a temporary restraining order against the defendants; and it appearing to the Court that the defendant the United Mine Workers of America has given to the Secretary of the Interior a notice dated November 15, 1946, purporting to terminate the so-called Krug-Lewis Agreement dated May 29, 1946, as of 12 o'clock p.m. midnight, November 20, 1946, and it further appearing that said agreement applies to the employment of members of said United Mine Workers of America serving in the bituminous coal mines now in the possession of the United States of America acting by the Secretary of the Interior, and it further appearing that it is the announced practice of the members of the United Mine Workers of America to refuse to work in the mines while there is no contract in effect with the operator of the mines; and it further

A3 appearing that if the purported notice of termination is permitted to remain in effect, the miners may walk out of the mines, and refuse to resume work, and that the resultant stoppage in bituminous coal production will cause great loss and irreparable damage to the plaintiff, and that such stoppage will directly interfere with governmental operations and sovereign functions, and will adversely affect the public interest, and will seriously endanger the public welfare and safety, and it further appearing that the action of the defendants may deprive the Court of full and effective jurisdiction over the claim set forth in the complaint, and may impair, obstruct, or render fruitless, the Court's determination of this action;

NOW, THEREFORE, IT IS BY THE COURT this 18th day of November, 1946,

ORDERED that the defendants and each of them and their agents, servants, employees, and attorneys, and all persons in active concert or participation with them, be and they are hereby restrained pending further order of this Court from permitting to continue in effect the notice heretofore given by the defendant John L. Lewis to the Secretary of Interior dated November 15, 1946; and from issuing or otherwise giving publicity to any notice that or to the effect that the Krug-Lewis Agreement has been, is, or will at some future date be termi-

nated, or that said agreement is or shall at some future date be nugatory or void at any time during Government possession of the bituminous coal mines; and from breaching any of their obligations under said Krug-Lewis Agreement; and from coercing, instigating, inducing, or encouraging the mine workers at the bituminous coal mines in the Government's possession, or any of them, or any person, to interfere by strike, slow down, walkout, cessation of work, or otherwise, with the operation of said mines by continuing in effect the aforesaid notice or by issuing any notice of termination of agree-
A4 ment or through any other means or device; and from interfering with or obstructing the exercise by the Secretary of the Interior of his functions under Executive Order 9728; and from taking any action which would interfere with this Court's jurisdiction or which would impair, obstruct, or render fruitless, the determination of this case by the Court;

AND IT IS FURTHER ORDERED that this restraining order shall expire at 3 o'clock p. m. on November 27th, 1946, unless before such time the order for good cause shown is extended, or unless the defendants consent that it may be extended for a longer period;

AND IT IS FURTHER ORDERED that plaintiff's motion for preliminary injunction be set down for hearing on November 27th, 1946, at 10:00 o'clock a. m.

J. ALAN GOLDSBOROUGH,
Justice.

Signed at 12:50 p. m., November 18, 1946.
A True Copy:
Test:
[SEAL] CHARLES E. STEWART, *Clerk.*
By JOHN J. DONOVAN /s/, *Deputy Clerk.*

Personally served copy of the within on John L. Lewis, 11/18/46. /s/ W. Bruce Matthews, U. S. Marshal in and for the D. of C. By Charles I. Mattingly /s/, Deputy U. S. Marshal /md/.

9 In the District Court of the United States for the District of Columbia

C. A. No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed Nov. 21, 1946. Charles E. Stewart, Clerk.

Points and authorities in support of petition for rule to show cause

The power of the Court to punish for contempt is well set forth in *Kelton* v. *United States*, 294 Fed. 491 (C. C. A. 3, 1923), certiorari denied 264 U. S. 590, in which the court stated (at p. 493):

"The power of a court to make an order carries with it the equal power to punish for disobedience of that order, and the inquiry as

to the question of disobedience has been, from time immemorial, the special function of the court. In re Debs, 158 U. S. 564, 594, 15 Sup. Ct. 900, 39 L. Ed. 1092. In the case of Ex parte Robinson, 86 U. S. (19 Wall.) 505, 510 (22 L. Ed. 205), the Supreme Court said: 'The power to punish for contempts is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts, and consequently to the due administration of justice. The moment the courts of the United States were called into existence and invested with jurisdiction over any subject, they became possessed of this power.'

"Moreover, the power of courts to punish for contempts has been conferred and defined by the Act of Congress under which this proceeding was instituted (supra), and this power by the terms of the statute extends to— * * * disobedience or resistance * * * by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the said courts.' Comp. St. § 1245."

10 Respectfully submitted.

TOM C. CLARK,
Attorney General of the United States.
By /s/ JOHN F. SONNETT,
Assistant Attorney General.

11 In the United States District Court for the District of Columbia

Civil No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA ET AL., DEFENDANTS

Filed Nov. 21, 1946. Charles E. Stewart, Clerk.

CITY OF WASHINGTON,
District of Columbia, ss:

MICHAEL F. COLASANTO and CHARLES I. MATTINGLY, being first duly sworn, depose and say:

That they at all times herein mentioned were duly appointed and qualified and acting Deputy United States Marshals in and for the District of Columbia and that on the 18th day of November at 2:15 o'clock p. m. they personally served on John L. Lewis individually, and as President of the United Mine Workers of America, an unincorporated association, and on the United Mine Workers of America, an unincorporated association, by John L. Lewis, President, at their place of business, the United Mine Workers Building. 900 I Street NW., Washington, D. C., a certified copy of the Restraining Order issued and signed by the Court in the above-entitled cause at 12:50 o'clock p. m., November 18, 1946, a copy of a Memorandum of Law, Points, and Authorities filed on behalf of the United States in support of the application for the temporary Restraining Order and for temporary injunctive relief, a copy of the affidavits in support of the prayer for the Restraining Order of J. A. Krug, Secretary of the Interior,

12 James Forrestal, Secretary of the Navy, Robert P. Patterson, Secretary of War, John D. Small, Administrator, Civilian Production Administration, G. H. Helmbold, Managing Director, Ship Operations, United States Maritime Commission, Leland Olds, Chairman, Federal Power Commission, James A. Crabtree, Acting Surgeon General, Public Health Service, and J. N. Johnson, Director, Office of Defense Transportation, and a copy of the Complaint of the United States of America for Declaratory Judgment and Injunctive Relief with Exhibits A-M, inclusive, attached thereto, all of which were filed in the above entitled cause of November 18, 1946; and that a copy of the Restraining Order so served by them on the defendants is attached hereto and made a part hereof.

CHARLES I. MATTINGLY /s/.
MICHAEL F. COLASANTO /s/.

Subscribed and sworn to before me this 21st day of November 1946.

MARY M. REPETTI /s/.
Notary Public in and for the District of Columbia.

My commission expires on the 1st day of December 1949.

7 In the District Court of the United States for the District of Columbia

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed Nov. 21, 1946. Charles E. Stewart, Clerk.

Rule to Show Cause

On motion of Tom C. Clark, Attorney General of the United States, by John F. Sonnett, Assistant Attorney General of the United States, and on the filing of the petition of the United States of America, supported by the affidavit of Captain N. H. Collisson, U. S. N. R., Coal Mines Administrator, Department of the Interior, charging contempt of court committed by the United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as president of the United Mine Workers of America,

IT IS HEREBY ORDERED that the said United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as president of the United Mine Workers of America, and each of them, be and appear before this court on the 25th day

of November 1946, at ten o'clock in the forenoon of that day, to show cause if any they have, why they should not be punished as and for a contempt of this court,

IT IS FURTHER ORDERED, that in the event that upon or by the return or returns of said United Mine Workers of America, an
8 unincorporated association, and John L. Lewis, individually and as president of the United Mine Workers of America, it shall be found that the alleged contempt be not sufficiently purged, a trial shall be and is hereby directed to be held on the 27th day of November, 1946, at 10:00 o'clock in the forenoon of that day, at a term of the District Court of the United States for the District of Columbia, to be held in Room 319, The Municipal Court Building, 5th and E Streets NW, District of Columbia, or at such other day as shall be determined by this court.

IT IS FURTHER ORDERED, that the accused, and each of them, shall, unless waived by them, be tried upon said charges of contempt by the court with an advisory jury to be empanelled by this court.

IT IS FURTHER ORDERED, that a certified copy of this order, together with a copy of said petition and a copy of the affidavit of N. H. Collisson in support thereof, be served by the United States Marshal for the District of Columbia, or one of his deputies, upon each of the above-named parties and that due return of said service be filed by the Marshal herein.

Dated November 21, 1946.

T. ALAN GOLDSBOROUGH /s/,
Justice.

Personally served copy of the within on United Mine Workers of America by serving John L. Lewis, President, 11/22/46. W. Bruce Matthews, U. S. Marshal in and for the D. of C. By H. W. McCauley /s/, Deputy U. S. Marshal /B/.

Personally served copy of the within on John L. Lewis, 11/22/46 /s/. W. Bruce Matthews, U. S. Marshal in and for the D. of C. by H. W. McCauley /s/, Deputy U. S. Marshal /B/.

1 In the District Court of the United States
for the District of Columbia

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed Nov. 25, 1946. Charles E. Stewart, Clerk.

Brief concerning issues arising on the return to the rule to show cause

1 In the District Court of the United States
for the District of Columbia

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Brief concerning issues arising on the return to the rule to show cause

The Rule to Show Cause issued by this Court on November 21, 1946, against the above-named defendants, provides in part:

> "IT IS FURTHER ORDERED, that in the event that upon or by the return or returns of said United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as president of the United Mine Workers of America, it shall be found that the alleged contempt be not sufficiently purged, a trial shall be and is hereby directed to be held on the 27th day of November 1946, at 10:00 o'clock in the forenoon of that day, at a term of the District Court of the United States for the District of Columbia, to be held in Room 319, The Municipal Court Building, 5th and E Streets NW., District of Columbia, or at such other day as shall be determined by this court."

THE ISSUES

It is plain from the terms of the above Rule to Show Cause, and under settled law, that only two issues are before the Court on the return to the Rule, namely, (1) whether a contempt is *alleged* and (2) if so, whether such *alleged* contempt has been sufficiently purged.

In the event that the Court finds upon the return that a contempt is alleged and has not been sufficiently purged, a trial
2 should be had in accordance with the Court's rule providing:

> "IT IS FURTHER ORDERED, that the accused, and each of them, shall, unless waived by them, be tried upon said charges of contempt by the court with an advisory jury to be empanelled by this court."

I

A CONTEMPT IS ALLEGED

The Petition for a Rule to Show Cause and the affidavit of Captain N. H. Collisson, USNR, in support thereof allege

(1) that service of the temporary restraining order issued by this Court 12:50 p. m. on November 18 was made on the defendants at 2:15 p. m. of that day, and

(2) that thereafter the defendants willfully, wrongfully, and deliberately disobeyed and violated the temporary restraining order in at least six respects, as follows:

> "(1) In that, since 2:15 p. m. on November 18, 1946, and at all times since and up to 1:30 p. m. today, November 21, 1946, the defendants and each of them have permitted to continue in effect

the notice heretofore given by the defendant John L. Lewis to the Secretary of Interior dated November 15, 1946.

"(2) By breaching their obligation, under the Krug-Lewis agreement, to continue said agreement in effect during the period of Government possession and operation of said mines.

"(c) By instigating, inducing, and encouraging the workers at said mines to interfere, by strike, slow-down, walk-out and cessation of work, with the operation of said mines by continuing in effect the notice of November 15, 1946, purporting to terminate the Krug-Lewis Agreement.

"(d) By permitting to remain outstanding the aforesaid notice of November 15, 1946, purporting to terminate the so-called Krug-Lewis Agreement, thereby completing the calling of a strike by said defendants and completing the instigation, inducement, and encouragement by said defendants, of the mine workers at the bituminous coal mines in the Government's possession to interfere, by strike, slow-down, walk-out, and cessation of work, with the operation of said mines.

3 "(e) By failing to withdraw the notice of November 15, 1946, purporting to terminate the Krug-Lewis Agreement, and by failing to announce to and notify the members of defendant Union employed at said mines that said notice of November 15, 1946, was withdrawn, and by failing to notify said members of defendant Union that there is in force and in effect an agreement or contract between the defendant Union and the United States of America, that is, the so-called Krug-Lewis Agreement, the said defendants instigated, induced, and encouraged the workers at said mines to interfere by strike, slow-down, walkout, and cessation of work, with the operation of said mines, thereby interfering with and obstructing the exercise by the Secretary of the Interior of his functions under Executive Order No. 9728 and with the performance of other governmental functions.

"(f) By reason of the violation of the Temporary Restraining order by said defendants as set forth above, the said defendants have interfered with this Court's jurisdiction."

There is clearly alleged contempt of the judicial power of this Court, which under Article III of the Constitution "shall extend to all Cases in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority * * *." That power was exercised in this case when the court issued a restraining order designed to protect its power judicially to determine the substantial controversy between the parties. And, as the cases have clearly recognized, it is essential to the discharge of the judicial power that a temporary restraining order be complied with unless and until it is vacated by the court. Any other rule would permit the person restrained, rather than the court, to exercise the judicial power provided for by the Constitution.

For, as Mr. Chief Justice Marshall pointed out in *Marbury* v. *Madison*, 5 U. S. 137, 176 (1803)—

"It is, emphatically, the province and duty of the judicial department, to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule."

4 This Court's power to adjudicate the defendants in contempt for their failure to comply with the restraining order is not affected by any determination of the question whether the Norris-LaGuardia Act applies to this case. If the defendants question the Court's jurisdiction because they erroneously contend that that Act is applicable, such an objection would at best be only an arguable contention which would pose an issue for decision by the Court. Pending a decision of that very issue, the Court was and is clearly empowered to protect its jurisdiction to pass on the question. In other words, regardless of what contentions the defendants may make, and regardless of what final decisions that may be made on the respective contentions of the parties, the Court had power and jurisdiction to issue the temporary restraining order, and has corresponding power and jurisdiction to compel enforcement and to punish a party who wilfully fails and refuses to comply with such an order.

Indeed, this rule of law is so fundamental that it has been seriously questioned but a few times, and in those few instances it has been expressly recognized as applicable to cases such as this. *United States* v. *Shipp*, 203 U. S. 563 (1906); *Carter* v. *United States*, 135 F. (2d) 858 (C. C. A. 5), 1943.

In *United States* v. *Shipp*, an original information for contempt of the Supreme Court of the United States was involved. Johnson, a Negro, had previously been sentenced to death by a Tennessee State Court for rape. He had petitioned to the United States Circuit Court for habeas corpus asserting that negroes had been excluded from the grand and petit juries and that he had been deterred from making proper presentation of this and other defenses at the trial and from taking an appeal through fear of mob violence. The Circuit Court had denied the petition after hearing. An appeal to the Su-

5 preme Court had been allowed and that court had ordered that all proceedings against Johnson be stayed pending the appeal. Shipp, the County Sheriff, had been notified of this order by telegraph and full newspaper accounts. The information for contempt alleged, however, that he had left the jail unguarded except for one jailer, and that he and other defendants had participated in breaking into the jail, taking Johnson out and hanging him.

Shipp and other appellants, on the return to the order to show cause, asserted that the Court was without jurisdiction to punish the contempt because it had jurisdiction of the appeal only if a constitutional question was involved, and the evidence before the Circuit Court, if not the face of the petition, showed that the alleged constitutional question was a pretense. The case was, on motion of the Solicitor General, set down for hearing on preliminary questions of law (214 U. S. at 455). After argument the Court, in a unanimous opinion by Mr. Justice Holmes, 203 U. S. 563, rejected the contention as to want of jurisdiction and ordered that the contempt be tried. Justice Holmes said:

> "We regard this argument as unsound. It has been held, it is true, that orders made by a court having no jurisdiction to make them may be disregarded without liability to process for contempt. *In re Sawyer*, 124 U. S. 200; *Ex parte Fisk*, 113 U. S. 713; *Ex parte Rowland*, 104 U. S. 604. But even if the Circuit Court had no jurisdiction to entertain Johnson's petition, and if this court

had no jurisdiction of the appeal, this court, and this court alone, could decide that such was the law. It and it alone necessarily had jurisdiction to decide whether the case was properly before it. On that question, at least, it was its duty to permit argument and to take the time required for such consideration as it might need. See *Mansfield, Coldwater & Lake Michigan Ry. Co.* v. *Swan*, 111 U. S. 379, 387. Until its judgment declining jurisdiction should be announced, it had authority from the necessity of the case to make orders to preserve the existing conditions and the subject of the petition, just as the state court was bound to refrain from further proceedings until the same time. Rev. Stat. § 766;
6 act of March 3, 1893, c. 226, 27 Stat. 751. The fact that the petitioner was entitled to argue his case shows what needs no proof, that the law contemplates the possibility of a decision either way, and therefore must provide for it." (P. 573.)

Similarly, in *Carter* v. *United States*, the Circuit Court of Appeals for the Fifth Circuit sustained a contempt judgment made by a district court for violation of a temporary restraining order which had been issued by it in a case where the Circuit Court of Appeals had held that the district court had no jurisdiction over the basic action in connection with which the temporary restraining order was issued.

The *Carter* case arose as follows: George and Paul Coumanis, employers, petitioned in a Federal district court for an injunction against two labor unions and certain individuals. Without notice to the defendants, the court made findings in accordance with the requirements of the Norris-LaGuardia Act and issued a *restraining order* setting a time for hearing a week later. At that hearing, defendants pleaded that there was no Federal jurisdiction but the court, on an amended complaint, found that it had jurisdiction and issued an injunction. On appeal from that injunction, the Circuit Court of Appeals for the Fifth Circuit held (*Brown* v. *Coumanis*, 135 F. (2d) 163 (1943)) that Federal jurisdiction was wanting and reversed the district court.

Three days after issuance of the temporary *restraining order*, and prior to any hearing in the district court case, the plaintiff had initiated contempt proceedings against Carter, one of the defendants. Carter had moved to dismiss the proceedings because of the lack of Federal jurisdiction to issue an injunction and also had an-
7 swered. The court, speaking through Judge Sibley, affirmed the judgment of contempt. Addressing itself to the contention that the restraining order was beyond the jurisdiction of the court and therefore could not form a basis for contempt proceedings, the court said:

"It cannot now be broadly asserted that a judgment is always a nullity if jurisdiction of some sort or other is wanting. It is now held that, except in case of plain usurpation, a court has jurisdiction to determine its own jurisdiction, and if it be contested and on due hearing it is upheld, the decision unreversed binds the parties as a thing adjudged. *Treines* v. *Sunshine Mining Co.*, 308 U. S. 66, 60 S. Ct. 44, 84 L. Ed. 85; *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381, 403, 60 S. Ct. 907, 84 L. Ed. 1263; *Stoll* v. *Gottlieb*, 305 U. S. 165, 59 S. Ct. 134, 83 L. Ed. 104. So in the matter of federal jurisdiction, which is often a close

question, the federal court may either have to determine the facts, as in contested citizenship, or the law, as whether the case alleged arises under a law of the United States. See *Binderup* v. *Pathe Exchange*, 263 U. S. 291, at page 305, 44 S. Ct. 96, 68 L. Ed. 308" (P. 861).

The Court discussed *United States* v. *Shipp*, and stated that that case applied directly to the action of the District Court, pointing out that the District Court

> "had a new question of jurisdiction to solve. It alone had authority in the first instance to decide whether or not the case arose under the Norris-LaGuardia Act, 29 U. S. C. A. §§ 101–115, a law of the United States. It could lawfully by a temporary injunction preserve the business which was the subject of the litigation until a hearing could be had. The order was not final. It deprived Carter of no right. It only required that he refrain from interfering with another man for a few days. Carter did not elect to move to dissolve the order, but to flout and disobey it. The order was, while it lasted, a lawful one, such as a district court of the United States in the exercise of its equity powers could make, pending a hearing of a doubtful question of jurisdiction. The question of jurisdiction was not frivolous. It had never before been decided." (P. 862).

8

II

THE ALLEGED CONTEMPT HAS NOT BEEN PURGED

As of the time of the preparation of this brief, we are informed and believe that defendants have not purged themselves of the alleged contempt. The temporary restraining order plainly required that the defendants effectively rescind or withdraw the notice given by defendant Lewis to the Secretary of the Interior, dated November 15, 1946, purporting to terminate the Krug-Lewis Agreement. So far as the Government is aware, the defendants have not taken this action.

Failing to act or merely remaining at rest can provide no defense for the disobedience of an order of the Court which requires defendants to act. Equity courts generally have power to issue mandatory injunctions. The power of this Court to issue a temporary restraining order such as that in this case is clear under well settled authority.

A case applicable to the instant one is that of *Toledo, etc. Railway Co.* v. *Pennsylvania Co., et al.*, 54 Fed. 730 (C. C. Ohio, 1893). In that case the Toledo Railway brought an action in equity against the Pennsylvania Company and others to enjoin them from refusing to handle railroad cars and freight which had been hauled over the complainant's road. The reason for the suit was that the complainant had a labor dispute with its employees, members of the Brotherhood of Locomotive Engineers. As a result of said dispute, complainant's employees went out on strike on March 7. One Arthur, the Chief Executive of the Brotherhood of Locomotive Engineers, declared on March 7 that this was a legal strike. This declaration, under the rules of the Brotherhood, was, in substance, an order to all other members of the Brotherhood not to haul freight issuing from the struck railroad.

9 After the issuance of the aforesaid strike notice, negotiations were resumed and on March 11 the strike notice was suspended. However, these negotiations broke down, and on March 16 Arthur sent out to members of his union a notice that the efforts to negotiate had failed and that members of the union should comply with the rules of the Brotherhood.

On the following day, March 17, the complainant asked for a temporary restrainnng order ex parte against Arthur, in which he was directed "to rescind any order he might have promulgated to engineers on connecting lines to refuse to handle complainant's freight."

This temporary ex parte restraining order was signed by Judge Taft, later Chief Justice of the United States, and was obeyed by Arthur.

On the later motion for the injunction to restrain Arthur "from issuing, promulgating, or continuing in force" the strike notice, the Circuit Court ruled that the court had adequate power and authority to issue the injunction.

In his opinion Judge Taft pointed out that the nature of the case was such that an injunction requiring affirmative action was necessary to keep the status quo and therefore both the temporary restraining order and the preliminary injunction could properly compel Arthur to rescind his order. He said, 54 Fed. at 741, 745:

> "The office of a preliminary injunction is to preserve the status quo until, upon final hearing, the court may grant full relief. Generally this can be accomplished by an injunction prohibitory in form, but it sometimes happens that the status quo is a condition not of rest but of action, and the condition of rest is exactly what will inflict the irreparable injury upon complainant, which he appeals to a court of equity to protect him from. In such a case courts of equity issue mandatory writs before the case is heard on its merits."
>
> 10 "It is the duty of the court promptly to prevent, at all hazards, the probably obstruction to its main injunction, by auxiliary injunctive process, and if such obstruction has actually been interposed, to remove it by the same means. On this ground the court was fully justified in restraining Arthur, as it did, from continuing in force any order he might have issued in conflict with the previous order of the court. This was mandatory, but it was necessary to secure the enforcement of the court's previous order, and to preserve the status quo. Had the order of Arthur, then in force, been allowed to continue, future equitable relief would have been unavailing. A rescission of the order could work injury to no one. Mandatory injunctions issue under such circumstances. Mr. High states the rule as follows, in his work on Injunctions (section 2):
>
> "'And when there is a willful and unlawful invasion of plaintiff's right, against his protest and remonstrance, the injury being a continuing one, a mandatory injunction may issue in the first instance.'"

The aforesaid case establishes conclusively that this court had full power to restrain defendants from permitting the notice of November 15 to continue in effect. The restraining order in this case is in substantially the same language as the court used in the *Toledo* case

and was an order to defendants affirmatively to rescind the notice of termination.

The ruling of Judge Taft in the *Toledo* case has been cited with approval by the Supreme Court. In the case of *Peoria Railway Co.* v. *United States*, 263 U. S. 538, Justice Brandeis, writing for the court, relied on the authority of the *Toledo* case in pointing out that the courts could compel the performance of a duty by a mandatory injunction. See 263 U. S. at 535:

> "The switching order here in question compels performance of the primary duty to receive and transport cars of a connecting carrier. That courts may enforce such duties by mandatory injunction, including a preliminary restraining order, has long been recognized."

Also directly in point is *Vaughan* v. *Winston*, 83 F. (2d) 370 (C. C. A. 10th, 1936). In that case the plaintiff, Winston, had
11 a contract with the Ohio Textbook Commission to furnish books. Defendant Vaughan, State Superintendent of Public Instruction, was of the opinion that this contract was illegal and therefore had refused to notify the school authorities to use plaintiff's books. In addition, prior to the institution of the action by Winston, Vaughan had written a letter to various school authorities in which he had stated that in his opinion the contract was illegal and that the school authorities were not bound to use plaintiff's books.

The trial court, as part of the relief, ordered Vaughan to send out another letter recalling his prior one. The Circuit Court of Appeals affirmed this part of the order, stating as follows:

> "As to that part of the order directing him to undo the damage done as far as it then could be by sending out a letter recalling the false and stating the true: It must be remembered that the wrong was a continuing one and irreparable. Every day patrons were buying unauthorized texts instead of appellee's. They would continue so to do until advised to the contrary by those in charge of the schools. The contract expressly absolved the state from financial liability thereon. Winston could not as a practical matter recoup the losses it was sustaining day by day either from the patrons who purchased unauthorized texts, or from Vaughan. The case presented is one where a continuing wrong can be stopped only by an affirmative act. In order to restore the status as it existed before Vaughan invaded the rights of appellee, affirmative action must be taken.
>
> "The power of equity, in an injunctive action, to issue an order requiring affirmative action is frequently and properly exercised. In *Jones* v. *Securities and Exchange Comm.*, 56 S. Ct. 654, 80 L. Ed. — the Supreme Court refers with approval to many cases which have required defendants to take affirmative action to restore the status, even though it required the demolition of a building. See, too, *Ickes* v. *Virginia-Colorado Development Corporation*, 295 U. S. 639, 55 S. Ct. 888, 79 L. Ed. 1627. Our own court has upon at least three occasions approved injunctive orders which required affirmative action by defendants. * * * The order of the trial court is couched in the form of a double negative, a circumstance to which we attach no importance. If the court is without

power in a particular case to require the doing of an affirmative act, it does not acquire that power by the form of words in which the command is couched.

12 "The order requiring Vaughan to send out letters to correct the untrue statements made in his earlier letters is justified on several distinct grounds: (1) It is the only appropriate means of rectifying the wrong done. (2) It was necessary to restore the status existing before Vaughan invaded appellee's rights. (3) Equity having jurisdiction to issue the prohibitory injunction, it had power to do all other things necessary to accomplish complete justice, for equity does not do things piecemeal." (See 83 F. (2d) 374.)

The rule permitting courts to issue temporary restraining orders *pendente lite* in mandatory form is therefore well settled and, in addition to the cases above cited, has been applied in a variety of situations. See e. g. *Trautwein* v. *Moreno Mutual Irrigation Co., et al.*, 22 F. (2d) 374 (C. C. A. 9th, 1927); *Wiemer* v. *Louisville Water Co.*, 130 Fed. 251 (W. D. Ky., 1903); Vol. I, High on Injunctions, 1905, section 5 (a).

Plainly, until now, defendants have failed to purge themselves of the alleged contempt since they have failed and refused to take the action required by the temporary restraining order issued by this Court.

CONCLUSION

In view of the foregoing, it is requested that the court order a trial on the alleged contempt to be held at 10:00 A. M. on November 27, 1946, as directed in the rule to show cause.

Respectfully submitted.

TOM C. CLARK,
Attorney General.

By John F. Sonnett,
JOHN F. SONNETT,
Assistant Attorney General.

JOHN F. SONNETT,
Assistant Attorney General.
GEORGE MORRIS FAY,
United States Attorney, District of Columbia.
JOHN FORD BAECHER,
Special Assistant to the Attorney General.
JOSEPH M. FRIEDMAN,
Special Assistant to the Attorney General.
J. FRANCIS HAYDEN,
Special Assistant to the Attorney General.
ROBERT L. WERNER,
Special Assistant to the Attorney General.

1 In the District Court of the United States
for the District of Columbia

Civil Action No. 37764

Filed Nov. 26, 1946. Charles E. Stewart, Clerk.

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Motion to discharge and vacate rule to show cause

Now come the defendants, United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as President of the United Mine Workers of America, by their Counsel, and move the Court to discharge and vacate the Rule to Show Cause heretofore, on the 21st day of November 1946, entered and issued herein the following reasons:

1

The Temporary Restraining Order is void in that this case involves and grows out of a labor dispute. Under the provisions of the Norris-LaGuardia Act (47 Stat. 70), and the provisions of Section 20 of the Clayton Act (38 U. S. Stat. C. 323, 730), this Honorable Court is without jurisdiction over the subject-matter of this cause.

2

Equity acts only where there is no plain, adequate, and complete remedy at law. The allegations of the Petition for the Rule purport to show a violation of the War Labor Disputes Act—a serious offense—in which field there is no place for equity intervention.

3

Observance of all the strict rules of criminal procedure is required to establish criminal contempt. It is apparent that the alleged facts set out in the unverified Petition and in the affidavit of Captain Collisson, filed in support of the Rule, are based wholly upon hearsay, information and belief and are not sufficient to sustain the Rule to Show Cause.

4

The object of the Petition for the Rule is necessarily punitive and not compensatory. Accordingly, it being for criminal contempt, the Petition should have been presented as an independent proceeding and not as supplemental to the original cause.

5

The Temporary Restraining Order is beyond the jurisdiction of this Honorable Court and therefore void because it contravenes the First, Fifth, and Thirteenth Amendments to the Constitution of the United States.

Wherefore, Defendants respectfully request this Honorable Court to discharge and vacate the Rule to Show Cause.

/s/ WELLY K. HOPKINS,
900 15th St. NW.
/s/ EDMUND BURKE,
/s/ T. C. TOWNSEND,
/s/ HARRISON COMBS,
900 15th St. NW.

Counsel for:
UNITED MINE WORKERS OF AMERICA.
JOHN L. LEWIS, *Individually*,
JOHN L. LEWIS,
President, United Mine Workers of America.

Of Counsel:
/s/ JOSEPH A. PADWAY,
/s/ HENRY KAISER,
/s/ JAMES A. GLENN.

In the District Court of the United States
for the District of Columbia

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed, Nov. 26, 1946. Charles E. Stewart, Clerk.

Notice of attachment of statement of points and authorities in support of defendants' motion to discharge and vacate rule to show cause

Attached hereto in support of Motion to Discharge and Vacate Rule to Show Cause is a memorandum of points and authorities.

/s/ Welly K. Hopkins,
WELLY K. HOPKINS,
900 15th St. NW.
/s/ Edmund Burke,
EDMUND BURKE,
/s/ T. C. Townsend,
T. C. TOWNSEND,
/s/ Harrison Combs,
HARRISON COMBS,
900 15th St. NW.

Counsel for:
UNITED MINE WORKERS OF AMERICA.
JOHN L. LEWIS, *Individually*,
JOHN L. LEWIS,
President, United Mine Workers of America.

In the District Court of the United States
for the District of Columbia

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed, Nov. 26, 1946. Charles E. Stewart, Clerk.

Points and authorities in support of motion to discharge and vacate

1

This case involves and grows out of a labor dispute. Norris LaGuardia Act (47 Stat. 70). (*Obergfell* v. *Green*, 121 Fed. 2d 46; *United States* v. *American Federation of Musicians*, 318 U. S. 741; *United States* v. *Weirton Steel Co.*, 7 Fed. Sup. 255; *Milk Wagon Drivers Union* v. *Lake Valley Farm Products, Inc.*, 311 U. S. 91; *Lauf* v. *Shinner*, 303 U. S. 325; *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U. S. 552; *United States* v. *Hutchinson*, 312 U. S. 219.) Accordingly, the court is without jurisdiction over the subject matter and its temporary restraining order may be disregarded without liability to process for contempt. (*Ex parte Rowland*, 104 U. S. 604, 26 L. Ed. 861; *Ex parte Risk*, 5 S. Ct. 724, 726, 113 U. S. 713, 28 L. Ed. 1117; *In re Sawyer*, 8 S. Ct. 482, 493, 124 U. S. 200, 31 L. Ed. 402.)

2

2

Equity will not enjoin a crime. (*People* v. *Prouty*, 262 Ill. 218, L. 104 N. E. 387; *Ex Parte Sawyer*, 124 U. S. 200; *Ex parte Jackson*, 96 U. S. 727; *World's Columbian Exposition* v. *U. S.*, 56 Fed. Rep. 654.)

3

This is an action for criminal contempt because no private rights are sought to be vindicated. Accordingly, the observance of all rules of criminal procedure is required. (*Gompers* v. *Buckstove and Range Company*, 221 U. S. 418; *Federal Trade Commission* v. *Abe McLean & Sons*, 94 Fed. 2d 802; *Michaelson* v. *United States Ex Rel. Chicago, St. Paul Minneapolis, Omaha Railroad Co.*, 266 U. S. 42.)

4

In an action for criminal contempt the proceeding must be independent and separate, not ancillary. (*Federal Trade Commission* v. *Abe McLean & Sons, supra; Merchants Stock & Grain Company* v. *Board of Trade of the City of Chicago*, 201 Fed. 20; *Michaelson* v. *United States, supra.* See also Section 107–c, Title 29.)

5

A restraining order which deprives persons of constitutional rights is void ab initio (*Gompers* v. *Buckstove and Range Company*, *supra*). The order in the instant case deprives defendants of the right to free speech, the right to peaceful assembly, the right to petition for the adjustment of grievances, the right to liberty and the right to
3 be free from involuntary servitude. (*Thornhill* v. *Alabama*, 310 U. S. 88; *Carlson* v. *California*, 310 U. S. 106; *Hague* v. *C. I. O.*, 307 U. S. 496; *American Federation of Labor* v. *Swing*, 312 U. S. 321; *Patterson* v. *Colorado*, 205 U. S. 454; *Stapleton* v. *Mitchell*, 60 F. Supp. 61; *Carpenters' Union* v. *Citizens' Committee*, 333 Ill. 225; *Bailey* v. *Alabama*, 219 U. S. 219; *Alabama State Federation of Labor* v. *McAdory*, 246 Ala. 1; *Henderson* v. *Coleman*, 7 Sou. 2d. 117; *Snyder* v. *Milwaukee*, 308 U. S. 147; *Republic Aviation Corp.* v. *National Labor Relations Board*, 65 S. Ct. 982, p. 987 footnote.)

In the District Court of the United States for the District of Columbia

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed Nov. 26. Charles E. Stewart, Clerk.

Service of Motion and Points of Authority herein made by delivery of two copies to the office of the Plaintiff's attorney herein at 26 November 1946.

Two copies received 3:05 p. m., November 26, 1946.

TOM C. CLARK,
Atty. Gen. of the U. S., Atty. for the United States.
By R. L. WERNER,
Special Ass't. to the Atty. Gen.

1 In the District Court of the United States for the District of Columbia

Civil No. 37764

Filed Nov. 27, 1946. Charles E. Stewart, Clerk.

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA ET AL., DEFENDANTS

Extension of temporary restraining order against defendants

This cause having come on to be heard on November 27, 1946, on plaintiff's motion and prayer for a preliminary injunction, and it appearing to the Court that the hearing will not be completed until after 3 o'clock p. m. on November 27, 1946, the time fixed for the expiration of the temporary restraining order heretofore issued by

the Court in this cause on November 18, 1946, and it further appearing to the Court that the reasons for the issuance of said temporary restraining order continue to exist and that therefore an extension of said temporary restraining order for a like period of 10 days is necessary pending the determination of the plaintiff's motion and prayer for a preliminary injunction;

IT IS ORDERED that the temporary restraining order issued in this cause on the 18th day of November 1946 be, and it hereby is, extended to 3 o'clock p. m. on the 7th day of December 1946, at which time it shall expire.

/s/ T. ALAN GOLDSBOROUGH,
Justice.

Signed at 2:45 p. m., November 27, 1946.

1

In the District Court of the United States
for the District of Columbia

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed Nov. 29, 1946. Charles E. Stewart, Clerk.

Answer of the defendants, United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as President of the United Mine Workers of America, to motion for preliminary injunction

Come now the defendants, United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as President of the United Mine Workers of America, and for answer to the motion for Preliminary Injunction filed against them and each of them by the plaintiff, herein say:

1

This Court is without jurisdiction to grant said Preliminary Injunction as prayed.

2

This Court is without jurisdiction to grant said Preliminary Injunction as prayed in that this case involves and grows out of a
2 labor dispute. Under the provisions of the Norris-LaGuardia Act (47 Stat. 70) and the provisions of Section 20 of the Clayton Act (38 U. S. Stat. C. 323, 730) this Honorable Court is without jurisdiction over the subject matter of this cause.

3

Equity acts only where there is no plain, adequate, and complete remedy at law. The allegations of the Petition for a Preliminary Injunction purport to show a violation of the War Labor Disputes

Act—a serious offense—in which field there is no place for equity intervention.

4

The Court is without power to issue a Preliminary Injunction in that such injunction would contravene the First, Fifth, and Thirteenth Amendments to the Constitution of the United States.

5

The sole function of a Preliminary Injunction is to preserve a status existing at the time of the institution of the suit to which it is ancillary. The Preliminary Injunction sought upon plaintiff's motion undertakes to alter and change such status instead of preserving the same.

6

This Honorable Court is without jurisdiction to grant a Preliminary Injunction because no injury to a private or property interest is shown.

3

7

Breach of contract sounds in damages. Resort to equity can only be had where the contract is crystal clear and then only for the purpose of specific performance. The institution of this suit for declaratory judgment is an admission of plaintiff that a dispute exists, and therefore a court of equity will not intervene.

8

And for other reasons which will appear upon the argument of this motion.

Whereupon, Defendants and each of them respectfully pray that the Motion for a Preliminary Injunction be denied.

/s/ Welly K. Hopkins
WELLY K. HOPKINS,
900 15th St. N. W.

/s/ Edmund Burke
EDMUND BURKE,

/s/ T. C. Townsend
T. C. TOWNSEND,

/s/ Harrison Combs
HARRISON COMBS,
900 15th St. N. W.

Counsel for:

UNITED MINE WORKERS OF AMERICA,
JOHN L. LEWIS, *Individually*,
JOHN L. LEWIS,
President, United Mine Workers of America.

Of Counsel:

/s/ Jos. A. Padway
JOSEPH A. PADWAY,

/s/ Henry Kaiser
HENRY KAISER,

/s/ James A. Glenn
JAMES A. GLENN.

In the District Court of the United States for the District of Columbia

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed Nov. 29, 1946. Charles E. Stewart, Clerk.

Notice of attachment of statement of points and authorities in support of defendants' answer to motion for preliminary injunction

Attached hereto in support of Answer to Motion for Preliminary Injunction is a memorandum of points and authorities.

/s/ Welly K. Hopkins
WELLY K. HOPKINS,
900 15th St. N. W.

/s/ Edmund Burke
EDMUND BURKE,

/s/ T. C. Townsend
T. C. TOWNSEND,

/s/ Harrison Combs
HARRISON COMBS,
900 15th St. N. W.

Counsel for:

UNITED MINE WORKERS OF AMERICA,
JOHN L. LEWIS, *Individually*,
JOHN L. LEWIS, *President*,
United Mine Workers of America.

1 In the District Court of the United States for the District of Columbia

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed November 29, 1946. Charles E. Stewart, Clerk.

Points and authorities in support of defendants' answer to motion for preliminary injunction

1

This Court is without jurisdiction to grant said Preliminary Injunction as prayed.

2

This Court is without jurisdiction to grant said Preliminary Injunction as prayed in that this case involves and grows out of a labor dispute.

The following authorities are offered in support of the two foregoing propositions:

Norris-LaGuardia Act (47 Stat. 70). (*Obergfell* v. *Green*, 121 Fed. 2d 46; *United States* v. *American Federation of Musicians*, 318 U. S. 741; *United States* v. *Weirton Steel Co.*, 7 Fed. Supp. 255; *Milk Wagon Drivers Union* v. *Lake Valley Farm Products, Inc.*, 311 U. S. 91; *Lauf* v. *Shinner*, 303 U. S. 325; *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U. S. 552; *United States* v. *Hutchinson*, 312 U. S. 219) Accordingly, the court is without jurisdiction over the subject matter and its temporary restraining order may be disregarded without liability to process for contempt. (*Ex parte Rowland*, 104 U. S. 604, 26 L. Ed. 861; *Ex parte Fisk*, 5 S. Ct. 724, 726, 113 U. S. 713, 28 L. Ed. 1117; *in re Sawyer*, 8 S. Ct. 482, 493, 124 U. S. 200, 31 L. Ed. 402.)

2

3

Equity acts only where there is no plain, adequate and complete remedy at law. (Chapter 144, 57 Stat. 163; U. S. C., Title 50, Secs. 1501–11, the War Labor Disputes Act.)

4

The Court is without power to issue a Preliminary Injunction in that such injunction would contravene the First, Fifth, and Thirteenth Amendments to the Constitution of the United States. (*Gompers* v. *Buckstove and Range Company*, 221 U. S. 418; *Thornhill* v. *Alabama*, 310 U. S. 88; *Carlson* v. *California*, 310 U. S. 106; *Hague* v. *C. I. O.*, 307 U. S. 496; *American Federation of Labor* v. *Swing*, 312 U. S. 321; *Patterson* v. *Colorado*, 205 U. S. 454; *Stapleton* v. *Mitchell*, 60 F. Supp. 61; *Carpenters' Union* v. *Citizens' Committee*, 333 Ill. 225; *Bailey* v. *Alabama*, 219 U. S. 219; *Alabama State Federation of Labor* v. *McAdory*, 246 Ala. 1; *Henderson* v. *Coleman*, 7 Sou. 2d. 117; *Snyder* v. *Milwaukee*, 308 U. S. 147; *Republic Aviation Corp.* v. *National Labor Relations Board*, 65 S. Ct. 982, p. 987 Footnote.)

3

5

The sole function of a Preliminary Injunction is to preserve a status existing at the time of the institution of the suit to which it is ancillary. (Petition for Rule against defendants to Show Cause. Affidavit of Captain Collisson in support of said petition and rule granted by the Court.)

6

This Honorable Court is without jurisdiction to grant a Preliminary Injunction because no injury to a private or property interest is shown. Jurisdiction in equity is predicated upon property rights. There is no property right here, either private or otherwise, which equity can or should undertake to protect. (*Gompers* v. *Buckstove and Range Company*, 221 U. S. 418; In re *Debs* 158 U. S. 564.)

7

Breach of contract sounds in damages. See points and authorities herein which are adopted in support of the foregoing proposition.

In the District Court of the United States for the District of Columbia

Civil Action No. 37764.

UNITED STATES OF AMERICA, PLAINTIFF

vs.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed Nov. 29, 1946. Charles E. Stewart, Clerk.

Order overruling motion to discharge and vacate rule to show cause

Upon consideration of the Motion of the Defendants To Discharge and Vacate The Rule To Show Cause, filed in the above entitled cause, it is, after argument by counsel for the respective parties hereto, this 29th day of November 1946,

ORDERED, That the said Motion be and the same is overruled.

BY THE COURT:

/s/ T. ALAN GOLDSBOROUGH,
Justice.

SEEN:

/s/ JOHN F. SONNETT,
Attorney for the Plaintiff.

/s/ WELLY K. HOPKINS,
Attorney for the Defendants.

1 In the District Court of the United States
for the District of Columbia

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed Dec. 3, 1946. Charles E. Stewart, Clerk.

Findings of fact

Upon consideration of the entire record, the briefs, and arguments of counsel, the Court finds that it has been established beyond a reasonable doubt that:

1. On May 21, 1946, after investigation, the President of the United States found and proclaimed that there were interruptions or threatened interruptions in the operation of the mines producing bituminous coal as the result of existing and threatened strikes or other labor

disturbances; that the coal produced by such mines was required for the war effort and was indispensable for the operation of the national economy during the transition of war to peace; that the war effort would be unduly impeded or delayed by such interruptions; and that the exercise, by the President, of the powers vested in him by the Constitution and Laws of the United States was necessary to insure the operation of such mines in the interest of the war effort and to preserve the national economic structure in the then existing emergency.

2 2. On May 21, 1946, the President of the United States, by virtue of the authority vested in him by the Constitution and laws of the United States, issued Executive Order 9728, whereby he authorized and directed the Secretary of the Interior to take possession of any and all bituminous coal mines the operations of which were then interrupted or threatened with interruption because of work stoppages, and, to the extent that he might deem necessary, of any real or personal property, franchises, rights, facilities, funds, and other assets used in connection with the operation of such mines; to operate or arrange for the operation of such mines in such manner as he might deem necessary in the interest of the war effort; and to do all things necessary for, or incidental to, the production, sale, and distribution of the coal produced, prepared, or handled by the said mines.

3. Pursuant to the provisions of said Executive Order 9728, the United States, through J. A. Krug, the Secretary of the Interior, on and after May 22, 1946, duly took possession of most of the bituminous coal mines of the nation. Since that time, the United States, through the Secretary of the Interior, has been and now remains in possession of such coal mines.

3 4. As a consequence of negotiations authorized by the said Executive Order 9728, the Secretary of the Interior, as Coal Mines Administrator, on May 29, 1946, executed an agreement at Washington, D. C., with the defendant John L. Lewis, as President of the defendant Union (which agreement is hereinafter sometimes referred to as the Krug-Lewis Agreement).

5. On May 29, 1946, the Secretary of the Interior, acting pursuant to the authority of the aforesaid Executive Order 9728 and Section 5 of the War Labor Disputes Act, and in accordance with the provisions of the Krug-Lewis agreement, filed an application with the National Wage Stabilization Board for changes in wages and other terms and conditions of employment at the bituminous coal mines in Government possession. The National Wage Stabilization Board thereupon, on May 31, 1946, issued its order, pursuant to Section 5 of the War Labor Disputes Act, approving changes in wages and other terms and conditions of employment agreed upon in the Krug-Lewis agreement and directed that they be put into effect at the said mines. Said order was approved by the President of the United States on May 31, 1946.

4 6. The Krug-Lewis agreement, by its terms, "covers for the period of Government possession the terms and conditions of employment in respect to all mines in Government possession which were as of March 31, 1946, subject to the National Bituminous Coal Wage Agreement, dated April 11, 1945."

7. The defendant Lewis, on October 21, 1946, sent a letter to the Secretary of the Interior in which he stated that Section 15 of the National Bituminous Coal Wage Agreement, dated April 11, 1945, had been specifically carried forward into the Krug-Lewis agreement and that under that section, either party to the Krug-Lewis agreement might give ten days' notice in writing of a desire for a negotiating conference upon the matters outlined in said notice; that the other party to the Krug-Lewis agreement was thereupon required to attend said negotiating conference; and that at the end of fifteen days after the beginning of said negotiating conference, either party might give to the other, a notice in writing of the termination of the Krug-Lewis agreement, to be effective five days after the receipt of such notice. Acting pursuant to this interpretation of the Krug-Lewis agreement, the defendant Lewis notified the Secretary of the Interior that the defendant Union requested "a joint conference of the accredited representatives of the joint contracting parties to the Krug-Lewis agreement of May 29, 1946, for the purpose of negotiating new arrangements affecting wages, hours, rules, practices, differentials, inequalities and all other pertinent matters affecting or appertaining to the National Bituminous coal industry.

5 8. In reply thereto, on October 22, 1946, N. H. Collisson, Captain, USNR, as Coal Mines Administrator, acting for the Secretary of the Interior, sent a letter to the defendant Lewis in which the Coal Mines Administrator stated that the Krug-Lewis agreement had superseded Section 15 of the National Bituminous Coal Wage Agreement dated April 11, 1945; that the provisions of said Section 15 were no longer in effect; that, therefore, the Secretary of the Interior and the Coal Mines Administrator were unable to treat the defendant Lewis' letter of October 21, 1946, as a notice given pursuant to any existing contract provisions; and that the Coal Mines Administration considered the Krug-Lewis agreement in full force and effect; but that the Administration was ready to meet with the defendant Lewis "to discuss matters affecting the operation of the bituminous coal mines under the Krug-Lewis agreement, and for that purpose, with the above reservations, any date for such discussions is agreeable to this Administration."

9. On the same day, the defendant Lewis sent a further letter to the Secretary of the Interior in which he reiterated his position and asserted that failure of the Secretary of the Interior to accede to his request would void the Krug-Lewis agreement.

10. On October 27, 1946, the Secretary of the Interior sent a telegram to the defendant Lewis requesting the defendant Lewis and (or) his representatives to meet with the Coal Mines Administrator and his associates on November 1 or any other date agreeable to the defendant Lewis.

6 12. In reply to the said telegram of October 27, 1946, the defendant Lewis, by a telegram of October 28, 1946, to the Secretary of the Interior, advised the Secretary of the Interior as follows:

"I esteem your telegram 27th, received by me today, as compliance with request for official conference contained by letter 21 October. I accordingly advise that representatives United Mine Workers will meet with Coal Mines Administrator Collisson and his associates at 11 o'clock a. m. on Friday, 1 November. Under these conditions Krug-

Lewis Agreement remains effective and unchanged during period of negotiation."

13. On November 1, 1946, a conference was held in Washington, D. C., attended by representatives of the Secretary of the Interior and of the defendant Union, and that conference was thereafter continued from time to time, from November 1 to and including November 14, 1946, all without prejudice to the contentions of the respective parties regarding the right claimed by the defendants to terminate the Krug-Lewis agreement by unilateral notice. During the course of the meeting, on November 11, 1946, attended by the defendant Lewis and the Secretary of the Interior, among others, the representatives of the defendant Union for the first time advanced specific proposals for changes in the wages and other terms and conditions of employment in effect at the bituminous coal mines in the Government's possession, which proposals included changes of a substantial and far-reaching nature and which would involve an increase in the cost of production of coal at the mines of at least fifty cents a ton.

7 14. Thereafter, on November 15, 1946, the defendant Lewis sent a letter to the Secretary of the Interior stating that "Fifteen days having now elapsed since the beginning of the above conference, the United Mine Workers of America, exercising its option, hereby terminate said Krug-Lewis agreement as of 12:00 o'clock p. m., midnight, Wednesday, November 20, 1946."

15. On the same day the Secretary of the Interior advised the defendant Lewis, by letter, "that you have no power under the Krug-Lewis agreement of May 29 or under the law, by unilateral declaration, to terminate the contract which by its terms 'covers for the period of Government possession the terms and conditions of employment.'"

16. It has been for some years, and is now, as the defendants at all times, well knew, the well-established policy of the defendant Union, consistently adhered to by its members, that the miners will not work in the absence of a contract, and that upon the declaration by the defendants that no contract exists, the miners cease work. No other stoppage order ever goes out. Such a declaration of "no contract" is in fact a call to strike.

8 17. The defendants sent out and distributed to the membership of the defendant Union a notice dated November 15, 1946, which read as follows:

UNITED MINE WORKERS OF AMERICA

JOHN L. LEWIS, *President* Metropolitan 0530

[SEAL]

United Mine Workers' Building
WASHINGTON 5, D. C.

NOVEMBER 15, 1946.

TO THE MEMBERSHIP OF THE UNITED MINE WORKERS OF AMERICA:

Greetings:

The following is the exact text of a letter sent to the Secretary of the Interior, in charge of Coal Mines Administration:

"NOVEMBER 15, 1946.

Honorable J. A. KRUG,
Secretary of the Interior, Washington, D. C.

DEAR MR. SECRETARY: In accordance with the provisions of the Krug-Lewis Agreement dated May 29, 1946, the United Mine Workers of America on October 21, 1946, officially requested a joint conference of the accredited representatives of the joint contracting parties to said agreement. Such conference convened on November 1, 1946.

Fifteen days having now elapsed since the beginning of said conference, the United Mine Workers of America, exercising its option, hereby terminates said Krug-Lewis Agreement as of 12:00 o'clock P. M., midnight, Wednesday, November 20, 1946.

Yours truly,

UNITED MINE WORKERS OF AMERICA,
By: JOHN L. LEWIS, *President.*"

The foregoing is for your official information.

Sincerely yours,

/s/ JOHN L. LEWIS,
President.

9 This notice was a cease work or strike notice.

18. The letters of November 15, 1946, from the defendants to the Secretary of the Interior, purporting to terminate the Krug-Lewis agreement as of November 20, 1946, was released by the defendants to, and published by, the public press on or about November 15 and 16, 1946.

19. Thereafter, on November 18, 1946, the United States Attorney General of the United States, brought a suit against the United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as president of the United Mine Workers of America, under the Federal Declaratory Judgment Act (28 U. S. C. Sec. 400) to obtain a declaration of rights and other legal relations, including a declaratory judgment or decree, an order for temporary injunctive relief, and such further relief as might be necessary or proper.

20. Upon the filing of the verified complaint, and upon plaintiff's application, this Court, on November 18, 1946, issued a temporary restraining order against the defendants, based upon the facts alleged

in the complaint and upon affidavits filed in support of the application for the restraining order. The restraining order directed:

"* * * that the defendants and each of them and their agents, servants, employees and attorneys, and all persons in active concert or participation with them, be and they are hereby restrained pending further order of this Court from permitting to continue in effect the notice heretofore given by the defendant John L. Lewis to the Secretary of Interior dated November 15, 1946; and from issuing or otherwise giving publicity to any notice that or to the effect that the Krug-Lewis Agreement has been, is, or will at some future date be terminated, or that said agreement is or shall at some future date be nugatory or void at any time during Government possession of the bituminous coal mines; and from breaching any of their obligations under said Krug-Lewis Agreement; and from coercing, instigating, inducing or encouraging the mine workers at the bituminous
10 coal mines in the Government's possession, or any of them, or any person, to interfere by strike, slow-down, walk-out, cessation of work, or otherwise, with the operation of said mines by continuing in effect the aforesaid notice or by issuing any notice of termination of agreement or through any other means or device; and from interfering with or obstructing the exercise by the Secretary of the Interior of his functions under Executive Order 9728; and from taking any action which would interfere with this Court's jurisdiction or which would impair, obstruct, or render fruitless, the determination of this case by the Court."

The restraining order by its terms provided that it would expire at 3:00 o'clock p. m. on November 27, 1946, unless extended. Plaintiff's motion for a preliminary injunction was set down for hearing on November 27, 1946, at 10:00 o'clock a. m.

21. The defendants, and each of them, were duly and properly served at 2:15 p. m. on November 18, 1946, with a certified copy of the temporary restraining order, together with copies of the verified complaint, including and embracing plaintiff's prayer and motion for a temporary restraining order, and the supporting affidavits.

22. Following the service upon them of the Court's temporary restraining order, the defendants, as hereinafter more fully appears, have taken no action designed to withdraw the notice of alleged termination dated November 15, 1946, but, on the contrary, have wilfully, wrongfully, and deliberately permitted said notice to continue in effect. The defendants, and each of them, knew that, in accordance with their own established policy, if the notice of alleged termination were not withdrawn and were permitted to continue in effect, a work stoppage at the mines would occur at midnight November 20, 1946. As a result of the foregoing, on or about November 18, 1946, there commenced at said coal mines a gradual walk-out, strike, cessation of, and refusal to work by the members of defendant Union, which increased
11 daily until 12 o'clock midnight of November 20, 1946. Since that hour and at all times thereafter there has been a walk-out, strike, cessation of, and refusal to work by substantially all of the members of the defendant Union employed at coal mines in the possession of the Government.

23. On November 21, 1946, the United States, by its Attorney General, filed a petition, supported by affidavits, for a rule to show cause

why the defendants should not be punished as and for a contempt of this Court, alleging that the defendants, in defiance of the terms of said temporary restraining order, had wilfully, wrongfully, and deliberately disobeyed said order.

24. On said petition and affidavit, the Court on the same day issued a rule to show cause ordering said defendants to appear before this court on November 25, 1946, to show cause why they should not be punished as and for contempt of this court. It was further ordered that if upon the return of said defendants it should be found that the alleged contempt was not sufficiently purged, a trial should be held on November 27, 1946, and the defendants should, unless waived by them, be tried upon the charges of contempt by this court with an advisory jury to be empaneled by the court.

25. On the return day, the defendants, being represented by counsel, and with the defendant John L. Lewis personally present in court, made an oral return to the rule to show cause as follows:

"The defendants and each of them respectfully state to the Court that they and each of them, since the giving of said notice of November 15, 1946, since the issuance of Your Honor's temporary restraining order of November 18, have done no act nor spoken any word pertaining to said notice or in reference to permitting it to continue in effect.

12 "The status of the notice and the position of each of the defendants in reference thereto remains today in the status which existed at the time of its giving and at all times subsequent thereto.

"The defendants and each of them, Your Honor, therefore respectfully say to this Court that the situation with respect to such notice of November 15, 1946, for the reasons herein stated remains unchanged.

"The defendants and each of them respectfully deny the jurisdiction of this Honorable Court to have issued the temporary restraining order and the rule to show cause issued thereunder.

"The defendants will be prepared to present arguments on this question on November 27, the time fixed by the Court in its order, as we understand it, for the hearing of this case."

26. Thereupon, the court, finding that a contempt had been alleged and that the alleged contempt had not been sufficiently purged by the defendants' return, ordered that the matter be set down for trial on November 27, 1946.

27. On November 26, 1946, defendants filed and served upon plaintiff a motion to discharge and vacate the rule to show cause in which they asserted that the court was without jurisdiction over the subject matter of the cause; that equity will not enjoin the commission of a crime; that this was a proceeding for a criminal contempt, the defendants suggesting that it was based wholly on hearsay, information, and belief and should have been presented as an independent proceeding; and, finally, that the restraining order was void because it contravened the First, Fifth, and Thirteenth Amendments to the Constitution of the United States.

28. On November 27, 1946, and again on November 29, 1946, with the defendant Lewis personally in court on both days and both the defendant Union and the defendant Lewis represented by counsel, arguments were presented in support of and in opposition to the motion to discharge and vacate the rule to show cause.

13

29. On November 27, 1946, before the expiration date of the temporary restraining order issued on November 18, 1946, the court, on plaintiff's application and for good cause shown, over objection of defendants extended said temporary restraining order for a like period of ten days.

30. On November 29, 1946, this court denied defendants' motion to discharge and vacate the rule to show cause and set forth its reasons therefor in an opinion which appears in the record. Thereupon the defendants entered pleas of not guilty, waived their rights, if any, to an advisory jury, and the case proceeded to trial before the court.

31. The defendants were, before the trial, apprised of the fact that they were charged with both a civil and a criminal contempt; were subsequently advised in advance of the names and identities of witnesses to be called by the plaintiff; and were, by their own admission in open court, liberally informed as to all relevant information and were given every opportunity to meet the contentions of the plaintiff.

32. A full and complete hearing extending over a period of four days was had, at which the parties were given full opportunity to present evidence, to cross-examine witnesses, to present argument, and to avail themselves of any and all rights to which they might be entitled.

33. Throughout all hearings on this matter, commencing with the hearing on November 25, 1946, defendant John L. Lewis was personally present before this court.

14 34. The defendants, and each of them

(a) have at all times since 2:15 p. m. on November 18, 1946, permitted to continue in effect the notice of alleged termination given by the defendant John L. Lewis to the Secretary of Interior on November 15, 1946;

(b) have instigated, induced and encouraged the workers at said mines to interfere, by strike, slow-down, walk-out and cessation of work, with the operation of said mines by continuing in effect the notice of November 15, 1946, purporting to terminate the Krug-Lewis Agreement;

(c) have completed the calling of a strike and have completed the instigation, inducement, and encouragement of the mine workers at the bituminous coal mines in the Government's possession to interfere, by strike, slow-down, walk-out and cessation of work, with the operation of said mines, by permitting to remain outstanding the aforesaid notice of November 15, 1946, purporting to terminate the so-called Krug-Lewis Agreement;

(d) have instigated, induced and encouraged the workers at said mines to interfere by strike, slow-down, walk-out, and cessation of work, with the operation of said mines, thereby interfering with and obstructing the exercise by the Secretary of the Interior of his functions under Executive Order No. 9728 and under the War Labor Disputes Act, and with the performance of other governmental functions, by failing to withdraw the notice of November 15, 1946, purporting to terminate the Krug-Lewis Agreement, and by failing to announce to and notify the members of defendant union employed at said mines that said notice of November 15, 1946, was withdrawn, and by failing to notify said members of defendant Union that there is

in force and in effect an agreement or contract between the defendant Union and the United States of America; that is, the so-called Krug-Lewis Agreement; and

(e) have interfered with this court's jurisdiction and have impaired and obstructed the determination of this case by the court.

35. As of November 20, 1946, there were approximately 76,000,000 tons of bituminous coal on hand and if the current work stoppage continues production would then be at the rate of about 658,000 tons a week, or about 5.3 percent of the normal production of about 12,500,000 tons a week. Normal requirements of bituminous coal during a three months' period beginning December 2, 1946, would be at the rate of approximately 54,000,000 tons a month, and if all available coal could be treated as a pool, although such ideal distribution cannot as a practical matter be obtained, to be used for an assumed normal consumption the supply on hand on November 20, 1946, would last about 37 days.

36. The characteristics of the economy of the United States make it peculiarly vulnerable to a stoppage in coal production, largely because of its great dependence on machines, about 43 percent of all energy produced in the United States being derived from bituminous coal. Four-fifths of all energy used in driving locomotives on Class 1 railroads is derived from bituminous coal; about four-fifths of all fuels and energy-producing material used in the production of steel is derived from bituminous coal; over 50 percent of all energy used in the production of electric power by public utilities is derived from bituminous coal; and about four-fifths of all energy obtained for electric power is derived from bituminous coal. Over 80 percent of Class 1 railroads, over 60 percent of public utilities and steel-producing industries would have to shut down completely within sixty days if the current coal stoppage continues for that length of time.

37. If the current work stoppage were to continue for a sixty-day period there would be a decline in total employment of at least 5,000,000 full-time workers and the national income would decline from the present rate of $170,000,000,000 per year to a rate of $150,000,000,000 per year with a resulting loss in income paid to workers at the rate of considerably more than $1,000,000,000 per month, and with a loss of national income, a fraction of which has been estimated at one billion to one and one-quarter billion dollars during that period. A loss of even one billion dollars in income payments, only a fraction of the loss which would actually be suffered from a continued work stoppage, would result in a loss to the United States of tax revenues of about $280,000,000.

38. The current work stoppage has caused and will continue to cause irreparable injury to the plaintiff, to the people of the United States and to the industry and economy of the United States.

39. The coal produced by the mines now affected by the work stoppage is indispensable for the continued operation of the national economy during the transition from war to peace.

CONCLUSIONS OF LAW

1. The United States in seizing the mines pursuant to Executive Order 9728 and in operating them following such seizure was at all

times exercising its sovereign functions derived from the Constitution and laws of the United States.

2. The defendants, and each of them, have obstructed and interfered with the exercise by the United States of its sovereign functions.

3. The defendants, and each of them, have unlawfully coerced, instigated, induced, and encouraged the mine workers at the bituminous coal mines in the Government's possession to interfere by strike, slowdown, walk-out, cessation of work, or otherwise, with the operation of coal mines.

17 4. By reason of the facts found in paragraphs numbered 34 (a) through 34 (e), above, the defendants, and each of them, have at all times since the service upon them on November 18, 1946, of the temporary restraining order of this Court, wilfully, wrongfully and deliberately disobeyed and violated the terms of the said temporary restraining order, and have obstructed and interfered with the determination of this case by the Court.

5. The defendant United Mine Workers of America at all times since the service upon it on November 18, 1946, of the temporary restraining order, has, beyond a reasonable doubt, committed and continues to commit a civil contempt of this Court.

6. The defendant United Mine Workers of America at all times since the service upon it on November 18, 1946, of the temporary restraining order, has, beyond a reasonable doubt, been guilty, and is now guilty of a criminal contempt of this Court.

7. The defendant John L. Lewis at all times since the service upon him on November 18, 1946, of the temporary restraining order, has, beyond a reasonable doubt, committed and continues to commit a civil contempt of this Court.

8. The defendant John L. Lewis at all times since the service upon him on November 18, 1945, of the temporary restraining order, has, beyond a reasonable doubt, been guilty and is now guilty of a criminal contempt of this Court.

T. ALAN GOLDSBOROUGH /s/.

DECEMBER 3, 1946.

21 In the District Court of the United States for the District of Columbia

Civil Action No. 37,764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THD UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed Dec. 4, 1946, Charles E. Stewart, Clerk.

Notice of renewed application

SIRS: PLEASE TAKE NOTICE that at the conclusion of the proceedings in relation to this cause now pending before the Court and which have been continued to December 4, 1946, at ten o'clock in the forenoon of that day, the undersigned will renew plaintiff's application for a preliminary injunction, the said application having been heretofore set down for a hearing on November 27, 1946, in and by the order made

and entered by the Court on November 18, 1946, and upon said renewed application the undersigned will rely upon the verified complaint herein, the affidavits submitted in support of plaintiff's application for a temporary restraining order and the entire record of the aforesaid proceedings including all the evidence taken therein and the findings of fact and conclusions of law made and entered therein on December 3, 1946.

2 AND PLEASE TAKE FURTHER NOTICE that at the hearing on said application for a preliminary injunction the undersigned will submit to the Court a proposed preliminary injunction in the form hereto annexed.

TOM C. CLARK,
Attorney General.
By: John F. Sonnett
JOHN F. SONNETT,
Assistant Attorney General,
Attorneys for Plaintiff.

December 3, 1946.
(Date)

To: Welly K. Hopkins, Esquire,
Edmund Burke, Esquire,
T. C. Townsend, Esquire,
Harrison Combs, Esquire,
900 15th Street NW., Washington, D. C., Attorneys for Defendants.

In the District Court of the United States for the District of Columbia

No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY, AND AS PRESIDENT OF UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed Dec. 5, 1946, Charles E. Stewart, Clerk.

CITY OF WASHINGTON,
District of Columbia, ss:

Herman Reddick, being duly sworn, deposes and says:

I am over the age of twenty-one years, and an employee of the Department of Justice.

On December 3, 1946, at about 6:00 p. m. I served the plaintiff's notice of renewed application for preliminary injunction with a proposed form of preliminary injunction on defendants' attorneys at 900 15th Street, N. W., Washington, D. C., by delivering a true copy thereof to a competent person in charge at their office at said address, said attorneys then being absent. I delivered said copy in a sealed envelope addressed to said attorneys as follows: Welly K. Hopkins, Edmund

Burke, T. C. Townsend, Harrison Combs, 900 15th Street, N. W., Washington, D. C.

/s/ Herman Reddick
HERMAN REDDICK.

Sworn to before me this 5th day of December 1946.

/s/ MARY M. REPETTI,
In & for Wash., D. C.
My Commission expires 12-1-49.

In the District Court of the United States
for the District of Columbia

No. 37764

UNITED STATES OF AMERICA

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF UNITED MINE WORKERS OF AMERICA

Filed Dec. 4, 1946. Charles E. Stewart, Clerk.

Judgment and sentence

This cause came on to be heard on the petition of the United States of America for a rule to show cause as to why the defendants should not be punished as and for contempts of this Court, and on the rule which issued, and the defendants having pleaded not guilty, and the Court being fully advised in the premises, and a full and complete trial having been held, and the Court having found beyond a reasonable doubt that the defendant John L. Lewis has committed a civil contempt and has committed and is guilty of a criminal contempt, and having made and signed findings of fact and conclusions of law, it is, by the Court, this 4th day of December 1946,

ADJUDGED, ORDERED, and DECREED:

That the defendant, John L. Lewis, be, and he hereby is, ordered to pay a fine of $10,000.00.

T. ALAN GOLDSBOROUGH,
Justice.

In the District Court of the United States for the District of Columbia

No. 37764

UNITED STATES OF AMERICA

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA

Filed Dec. 4, 1946. Charles E. Stewart, Clerk.

Judgment and sentence

This cause came on to be heard on the petition of the United States of America for a rule to show cause as to why the defendants should not be punished as and for contempts of this Court, and on the rule which issued, and the defendants having pleaded not guilty, and the Court being fully advised in the premises, and a full and complete trial having been held, and the Court having found beyond a reasonable doubt that the defendant, United Mine Workers of America, has committed a civil contempt and has committed and is guilty of a criminal contempt, and having made and signed findings of fact and conclusions of law, it is, by the Court this 4th day of December 1946,

ADJUDGED, ORDERED, AND DECREED:

That the defendant, United Mine Workers of America, be, and it hereby is, ordered to pay a fine in the sum of $3,500,000.00.

T. ALAN GOLDSBOROUGH,
Justice.

1 In the District Court of the United States for the District of Columbia

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed Dec. 4, 1946, Charles E. Stewart, Clerk.

Preliminary injunction

This cause having come on for hearing on the motion of the plaintiff for a preliminary injunction as prayed for in its complaint, and pursuant to the order of the Court entered November 18, 1946, and plaintiff having moved the Court that all evidence submitted in the proceedings had in connection with this cause be taken and considered as evidence for the purposes of plaintiff's motion for preliminary injunction, and having heard and considered all the testimony submitted herein, and having considered the verified complaint, defendants' answer to the motion for preliminary injunction, together with the affidavits submitted in support of the temporary restraining order the entire record, proceedings, briefs, and argument of counsel, the Court finds:

1. On May 21, 1946, after investigation, the President of the United States found and proclaimed that there were interruptions or threatened interruptions in the operation of the mines producing bituminous coal as the result of existing and threatened strikes or other labor disturbances; that the coal produced by such mines was required for the war effort and was indispensable for the operation of the national economy during the transition of war to peace; that the war effort would be unduly impeded or delayed by such interruptions; and that

the exercise, by the President, of the powers vested in him by the Constitution and Laws of the United States was necessary to insure the operation of such mines in the interest of the war effort and to preserve the national economic structure in the then existing emergency.

2 2. On May 21, 1946, the President of the United States, by virtue of the authority vested in him by the Constitution and laws of the United States, issued Executive Order 9728, whereby he authorized and directed the Secretary of the Interior to take possession of any and all bituminous coal mines the operations of which were then interrupted or threatened with interruption because of work stoppages, and, to the extent that he might deem necessary, of any real or personal property, franchises, rights, facilities, funds, and other assets used in connection with the operation of such mines; to operate or arrange for the operation of such mines in such manner as he might deem necessary in the interest of the war effort; and to do all things necessary for, or incidental to, the production, sale, and distribution of the coal produced, prepared, or handled by the said mines.

3. Pursuant to the provisions of said Executive Order 9728, the United States, through J. A. Krug, the Secretary of the Interior, on and after May 22, 1946, duly took possession of most of the bituminous coal mines of the nation. Since that time the United States, through the Secretary of the Interior, has been and now remains in possession of such coal mines.

3 4. As a consequence of negotiations authorized by the said Executive Order 9728, the Secretary of the Interior, as Coal Mines Administrator, on May 29, 1946, executed an agreement at Washington, D. C. with the defendant John L. Lewis, as President of the defendant Union (which agreement is hereinafter sometimes referred to as the Krug-Lewis Agreement).

5. On May 29, 1946, the Secretary of the Interior, acting pursuant to the authority of the aforesaid Executive Order 9728 and Section 5 of the War Labor Disputes Act, and in accordance with the provisions of the Krug-Lewis agreement, filed an application with the National Wage Stabilization Board for changes in wages and other terms and conditions of employment at the bituminous coal mines in Government possession. The National Wage Stabilization Board thereupon, on May 31, 1946, issued its order, pursuant to Section 5 of the War Labor Disputes Act, approving changes in wages and other terms and conditions of employment agreed upon in the Krug-Lewis agreement and directed that they be put into effect at the said mines. Said order was approved by the President of the United States on May

4 31, 1946.

6. The Krug-Lewis Agreement, by its terms, "covers for the period of Government possession the terms and conditions of employment in respect to all mines in Government possession which were as of March 31, 1946, subject to the National Bituminous Coal Wage Agreement, dated April 11, 1945."

7. The defendant Lewis, on October 21, 1946, sent a letter to the Secretary of the Interior in which he stated that Section 15 of the National Bituminous Coal Wage Agreement, dated April 11, 1945, had been specifically carried forward into the Krug-Lewis Agreement

and that under that section, either party to the Krug-Lewis agreement might give ten days' notice in writing of a desire for a negotiating conference upon the matters outlined in said notice; that the other party to the Krug-Lewis agreement was thereupon required to attend said negotiating conference; and that at the end of fifteen days after the beginning of said negotiating conference, either party might give to the other a notice in writing of the termination of the Krug-Lewis agreement, to be effective five days after the receipt of such notice. Acting pursuant to this interpretation of the Krug-Lewis agreement, the defendant Lewis notified the Secretary of the Interior that the defendant Union requested "a joint conference of the accredited representatives of the joint contracting parties to the Krug-Lewis agreement of May 29, 1946, for the purpose of negotiating new arrangements affecting wages, hours, rules, practices, differentials, inequalities, and all other pertinent matters affecting or appertaining to the National Bituminous coal industry.

5 8. In reply thereto, on October 22, 1946, N. H. Collisson, Captain, USNR, as Coal Mines Administrator, acting for the Secretary of the Interior, sent a letter to the defendant Lewis in which the Coal Mines Administrator stated that the Krug-Lewis agreement had superseded Section 15 of the National Bituminous Coal Wage Agreement dated April 11, 1945; that the provisions of said Section 15 were no longer in effect; that, therefore, the Secretary of the Interior and the Coal Mines Administrator were unable to treat the defendant Lewis' letter of October 21, 1946, as a notice given pursuant to any existing contract provisions; and that the Coal Mines Administration considered the Krug-Lewis agreement in full force and effect; but that the Administration was ready to meet with the defendant Lewis "to discuss matters affecting the operation of the bituminous coal mines under the Krug-Lewis agreement, and for that purpose, with the above reservations, any date for such discussions is agreeable to this Administration."

9. On the same day the defendant Lewis sent a further letter to the Secretary of the Interior in which he reiterated his position and asserted that failure of the Secretary of the Interior to accede to his request would void the Krug-Lewis agreement.

10. On October 27, 1946, the Secretary of the Interior sent a telegram to the defendant Lewis requesting the defendant Lewis and (or) his representatives to meet with the Coal Mines Administrator and his associates on November 1 or any other date agreeable to the defendant Lewis.

6 11. In reply to the said telegram of October 27, 1946, the defendant Lewis, by a telegram of October 28, 1946, to the Secretary of the Interior, advised the Secretary of the Interior as follows:

"I esteem your telegram 27th, received by me today, as compliance with request for official conference contained in letter 21 October. I accordingly advise that representatives United Mine Workers will meet with Coal Mines Administrator Collisson and his associates at 11 o'clock a. m. on Friday, 1 November. Under these conditions Krug-Lewis agreement remains effective and unchanged during period of negotiation."

12. On November 1, 1946, a conference was held in Washington, D. C., attended by representatives of the Secretary of the Interior and of the defendant Union, and that conference was thereafter con-

tinued from time to time, from November 1 to and including November 14, 1946, all without prejudice to the contentions of the respective parties regarding the right claimed by the defendants to terminate the Krug-Lewis agreement by unilateral notice. During the course of the meeting, on November 11, 1946, attended by the defendant Lewis and the Secretary of the Interior, among others, the representatives of the defendant Union for the first time advance specific proposals for changes in the wages and other terms and conditions of employment in effect at the bituminous coal mines in the Government's possession, which proposals included changes of a substantial and far-reaching nature and which would involve an increase in the cost of production of coal at the mines of at least fifty cents a ton.

7 13. Thereafter, on November 15, 1946, the defendant Lewis sent a letter to the Secretary of the Interior stating that "Fifteen days having now elapsed since the beginning of the above conference, the United Mine Workers of America, exercising its option, hereby terminates said Krug-Lewis agreement as of 12:00 o'clock p. m. midnight Wednesday, November 20, 1946."

14. On the same day the Secretary of the Interior advised the defendant Lewis, by letter, "that you have no power under the Krug-Lewis agreement of May 29 or under the law, by unilateral declaration, to terminate the contract which by its terms 'covers for the period of Government Possession the terms and conditions of employment.'"

15. It has been for some years, and is now, as the defendants at all times well knew, the well-established policy of the defendant Union, consistently adhered to by its members, that the miners will not work in the absence of a contract, and that upon the declaration by the defendants that no contract exists, the miners cease work. No other stoppage order ever goes out. Such a declaration of "no contract" is in fact a call to strike.

8 16. The defendants sent out and distributed to the membership of the defendant Union a notice dated November 15, 1946, which read as follows:

UNITED MINE WORKERS OF AMERICA

John L. Lewis,
President

Metropolitan
0530

[SEAL]

United Mine Workers' Building,
Washington 5, D. C.

November 15, 1946.

TO THE MEMBERS OF THE UNITED MINE WORKERS OF AMERICA:

Greetings: The following is the exact text of a letter sent to the Secretary of the Interior, in charge of Coal Mines Administration:

"November 15, 1946.

Honorable J. A. KRUG,
Secretary of the Interior, Washington, D. C.

DEAR MR. SECRETARY: In accordance with the provisions of the Krug-Lewis Agreement dated May 29, 1946, the United Mine Workers of America on October 21, 1946, officially requested a joint conference

of the accredited representatives of the joint contracting parties to said agreement. Such conference convened on November 1, 1946.

Fifteen days having now elapsed since the beginning of said conference, the United Mine Workers of America, exercising its option, hereby terminates said Krug-Lewis Agreement as of 12:00 o'clock P. M., midnight, Wednesday, November 20, 1946.

Yours truly,

UNITED MINE WORKERS OF AMERICA,
By JOHN L. LEWIS, President."

The foregoing is for your official information.

Sincerely yours,

/s/ JOHN L. LEWIS,
President.

9 This notice was a cease work or strike notice.

17. The letter of November 15, 1946, from the defendants to the Secretary of the Interior, purporting to terminate the Krug-Lewis agreement as of November 20, 1946, was released by the defendants to, and published by, the public press on or about November 15 and 16, 1946.

18. Thereafter, on November 18, 1946, the United States of America by the Attorney General of the United States, brought a suit against the United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as president of the United Mine Workers of America, under the Federal Declaratory Judgment Act (28 U. S. C., Sec. 400) to obtain a declaration of rights and other legal relations, including a declaratory judgment or decree, an order for temporary injunctive relief, and such further relief as might be necessary or proper.

19. Upon the filing of the verified complaint, and upon plaintiff's application, this Court, on November 18, 1946, issued a temporary restraining order against the defendants, based upon the facts alleged in the complaint and upon affidavit filed in support of the application for the restraining order. The restraining order directed:

"* * * that the defendants and each of them and their agents, servants, employees and attorneys, and all persons in active concert or participation with them, be and they are hereby restrained pending further order of this Court from permitting to continue in effect the notice heretofore given by the defendant John L. Lewis to the Secretary of Interior dated November 15, 1946; and from issuing or otherwise giving publicity to any notice that or to the effect that the Krug-Lewis Agreement has been, is, or will at some future date be terminated, or that said agreement is or shall at some future date be nugatory or void at any time during Government possession of the bituminous coal mines; and from breaching any of their obligations under said Krug-Lewis Agreement; and from coercing, instigating, inducing or encouraging the mine workers at the bituminous
10 coal mines in the Government's possession, or any of them, or any person to interfere by strike, slow-down, walk-out, cessation of work, or otherwise, with the operation of said mines by continuing in effect the aforesaid notice or by issuing any notice of termination of agreement or through any other means or device; and from interfering with or obstructing the exercise by the Secretary of the Interior of his functions under Executive Order 9728; and from taking any action which would interfere with this Court's jurisdiction or which

would impair, obstruct, or render fruitless the determination of this case by the Court."

The restraining order by its terms provided that it would expire at 3:00 o'clock p. m. on November 27, 1946, unless extended. Plaintiff's motion for a preliminary injunction was set down for hearing on November 27, 1946, at 10:00 o'clock a. m.

20. The defendants, and each of them, were duly and properly served at 2:15 p. m. on November 18, 1946, with a certified copy of the temporary restraining order, together with copies of the verified complaint, including and embracing plaintiff's prayer and motion for a temporary restraining order, and the supporting affidavits.

21. Following the service upon them of the Court's temporary restraining order, the defendants, as hereinafter more fully appears, have taken no action designed to withdraw the notice of alleged termination dated November 15, 1946, but, on the contrary, have willfully, wrongfully, and deliberately permitted said notice to continue in effect. The defendants, and each of them, know that, in accordance with their own established policy, if the notice of alleged termination were not withdrawn and were permitted to continue in effect, a work stoppage at the mines would occur at midnight November 20, 1946. As a result of the foregoing, on or about November 18, 1946, there commenced at said coal mines a gradual walkout, strike, cessation of and refusal to work by the members of defendant Union, which
11 increased daily until 12 o'clock midnight of November 20, 1946. Since that hour and at all times thereafter there has been a walkout, strike, cessation of and refusal to work by substantially all of the members of the defendant Union employed at coal mines in the possession of the Government.

22. On November 27, 1946, before the expiration date of the temporary restraining order issued on November 18, 1946, the Court, on plaintiff's application and for good cause shown, over objection of defendants extended said temporary restraining order for a like period of ten days.

23. As of November 20, 1946, there were approximately 76,000,000 tons of bituminous coal on hand and if the current work stoppage continues production would then be at the rate of about 658,000 tons a week or about 5.3 percent of the normal production of about 12,500,000 tons a week. Normal requirements of bituminous coal during a three months' period beginning December 2, 1946, would be at the rate of approximately 54,000,000 tons a month and if all available coal could be treated as a pool, although such ideal distribution cannot as a practical matter be obtained, to be used for an assumed normal consumption the supply on hand on November 20, 1946, would last about 37 days.

24. The characteristics of the economy of the United States make it peculiarly vulnerable to a stoppage in coal production, largely because of its great dependence on machines, about 43 percent of all energy produced in the United States being derived from bituminous coal. Four-fifths of all energy used in driving locomotives on Class 1 railroads is derived from bituminous coal; about four-fifths of all fuels and energy-producing material used in the production of steel is derived from bituminous coal; over 50 percent of all energy used in the production of electric power by public utilities is derived from bituminous coal; and about four-fifths of all energy obtained for electric

power is derived from bituminous coal. Over 80 percent of
12 Class 1 railroads, over 60 percent of public utilities and steel-producing industries, would have to shut down completely within sixty days if the current coal stoppage continues for that length of time.

25. If the current work stoppage were to continue for a sixty-day period, there would be a decline in total employment of at least 5,000,000 full-time workers and the national income would decline from the present rate of $170,000,000,000 per year to a rate of $150,000,000,000 per year, with a resulting loss in income paid to workers at the rate of considerably more than $1,000,000,000 per month, and with a loss of national income, a fraction of which has been estimated at one billion to one and one-quarter billion dollars during that period. A loss of even one billion dollars in income payments, only a fraction of the loss which would actually be suffered from a continued work stoppage, would result in a loss to the United States of tax revenues of about $280,000,000.

26. The current work stoppage has caused and will continue to cause irreparable injury to the plaintiff, to the people of the United States, and to the industry and economy of the United States.

27. The coal produced by the mines now affected by the work stoppage is indispensable for the continued operation of the national economy during the transition from war to peace.

WHEREFORE, upon all of the prior proceedings and upon the foregoing considerations and findings, and it appearing that unless a preliminary injunction is granted herein the existing stoppage in bituminous coal production will cause great loss and irreparable damage to the United States; that such stoppage will directly interfere with governmental operations and sovereign functions; will adversely affect the public interest; and will seriously endanger the public welfare and safety; and it further appearing that the action of the defendants may deprive the Court of full and effective jurisdic-
13 tion over the claim set forth in the complaint and may impair, obstruct, or render fruitless the Court's determination of this action, the Court being sufficiently advised in the premises,

IT IS BY THE COURT, this 4th day of December 1946,

ORDERED that the defendants, their agents, servants, employees, and attorneys, and all persons in active concert or participation with them be and each of them are hereby enjoined, pending final determination of this cause, from permitting to continue in effect the notice heretofore given by the defendant John L. Lewis to the Secretary of Interior, dated November 15, 1946; and from issuing or otherwise giving publicity to any notice that or to the effect that the Krug-Lewis Agreement has been, is, or will at some future date be terminated, or that said agreement is or shall at some future date be nugatory or void at any time during Government possession of the bituminous coal mines; and from breaching any of their obligations under said Krug-Lewis Agreement; and from coercing, instigating, inducing or encouraging the mine workers at the bituminous coal mines in the Government's possession, or any of them, or any person, to interfere by strike, slow-

down, walk-out, cessation of work, or otherwise, with the operation of said mines by continuing in effect the aforesaid notice or by issuing any notice of termination of agreement or through any other means or device; and from interfering with or obstructing the exercise by the Secretary of the Interior of his functions under Executive Order 9728; and from taking any action which would interfere with this Court's jurisdiction or which would impair, obstruct, or render fruitless, the determination of this case by the Court.

IT IS FURTHER ORDERED that this preliminary injunction be and remain in full force and effect until final hearing of this cause and until further order of this Court.

/s/ T. ALAN GOLDSBOROUGH,
Justice.

In the District Court of the United States for the District of Columbia

No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY, AND AS PRESIDENT OF UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed Dec. 5, 1946. Charles E. Stewart, Clerk.

CITY OF WASHINGTON,
District of Columbia, ss:

John Ford Baecher, being duly sworn, deposes and says:

I am over the age of twenty-one years, and an employee of the Department of Justice.

On the 4th day of December 1946, at or about 4:15 p. m. I served the preliminary injunction filed in the above-entitled case on December 4, 1946, on defendants' attorneys by delivering a true copy thereof to Joseph A. Padway, attorney for such defendants, at the District Court for the District of Columbia, 5th and E Streets NW., Washington, D. C.

/s/ John Ford Baecher
JOHN FORD BAECHER.

Sworn to before me this 5th day of December.

/s/ MARY M. REPETTI,
In and for Washington, D. C.

My Commission expires 12-1-49.

In the District Court of the United States
for the District of Columbia

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed Dec. 4, 1946. Charles E. Stewart, Clerk.

Admission and acceptance of service of copies of preliminary injunction issued December 4, 1946

At 4:30 p. m. on December 4, 1946, in Justice Goldsborough's court room I received and accepted service on copies of preliminary injunction issued on December 4, 1946, by Justice T. Alan Goldsborough in the above-entitled case. I received and accepted service of copies of said injunction on behalf of The United Mine Workers of America, an unincorporated association, and on behalf of John L. Lewis, individually and as President of The United Mine Workers of America.

/s/ JOS. A. PADWAY,
Counsel for the United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as President of the United Mine Workers of America.

CLERK'S COPY

Vol. II

TRANSCRIPT OF RECORD

(Pages 111 to 334)

Supreme Court of the United States

OCTOBER TERM, 1946

No. 759

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION

No. 760

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA

No. 781

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 782

JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 811

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI IN NOS. 759 AND 760 FILED DECEMBER 6, 1946.
PETITION FOR CERTIORARI IN NOS. 781 AND 782 FILED DECEMBER 12, 1946.
PETITION FOR CERTIORARI IN No. 811 FILED DECEMBER 21, 1946.

1 In the District Court of the United States For the District of Columbia

Holding a Motions Court

Civil Action No. 37,764

UNITED STATES OF AMERICA, PLAINTIFF

vs.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

WASHINGTON, D. C., *November 27, 1946.*

The above-entitled cause came on for hearing on a rule to show cause why the defendants should not be adjudged in contempt of court, before Hon. T. ALAN GOLDSBOROUGH, Associate Justice, at 10 o'clock a. m.

Appearances:

On behalf of the Government: JOHN F. SONNETT, Assistant Attorney General; JOHN FORD BAECHER, Special Assistant to the Attorney General; JOSEPH M. FRIEDMAN, Special Assistant to the Attorney General; J. FRANCIS HAYDEN, Special Assistant to the Attorney General; ROBERT L. WERNER, Special Assistant to the Attorney General; GEORGE MORRIS FAY, United States Attorney, District of Columbia.

2 On behalf of the Defendants: WELLY K. HOPKINS, 900 15th Street, NW.; EDMUND BURKE, Springfield, Illinois; T. C. TOWNSEND, Charleston, West Virginia; HARRISON COMBS, 900 13th Street, NW.; JOSEPH A. PADWAY, 738 Bowen Building; HENRY KAISER, 736 Bowen Building; JAMES A. GLENN, 736 Bowen Building.

3 PROCEEDINGS

The COURT. You may proceed, gentlemen, when you are ready.

(Thereupon, there was a conference at the bench which was not reported.)

The COURT. Gentlemen, the Court in considering the matter of procedure, the Court realizes that if the Norris-LaGuardia Act applies to the present controversy, an advisory jury is not adequate. The defendants would be entitled to a jury with all the usual powers of a jury, so it seems to the Court that the first thing to be determined is whether or not the Norris-LaGuardia Act applies.

Now, as I understand it, yesterday afternoon the defendants filed a motion——

Mr. HOPKINS. We did, sir, a motion to vacate and discharge the rule.

The COURT. A motion to vacate and discharge the rule, and in this motion the question of the applicability of the Norris-LaGuardia Act is involved, and also other matters, which I have not familiarized myself with. So, unless there is some reason that counsel on one side or the other can give why it should not be done, it seems to me

that the first thing for the Court to consider this morning is the motion to discharge and vacate the rule to show cause.

Mr. HOPKINS. We agree, Your Honor.

4 The COURT. I will see what counsel for the Government says.

Mr. HOPKINS. Oh, pardon me.

The COURT. Any objection to that procedure, gentlemen?

Mr. SONNETT. We respectfully submit this, the Government's view is that it would be appropriate for the Court to reserve decision on the question of the application of the Norris-LaGuardia Act until after the completion of the hearing and the taking of the proof which the Government is ready to offer this morning.

Our reason for that, among others, is that we do not believe that under Title 28 of the Judicial Code, and specifically Section 389 of the Code, where the proceeding is initiated by the United States, there is any question of jury trial as a matter of right on the part of the defendants.

The COURT. Well, of course, if the Norris-LaGuardia Act applies, the defendants would be entitled to a jury trial, absolutely.

Mr. SONNETT. That would be true, Your Honor, of course, if the section of the Norris-LaGuardia Act applied which set forth the procedure on the determination of a contempt. However, should Your Honor hold that the Norris-LaGuardia Act applies at all, I would presume that Your Honor would also hold that the earlier

5 section of the Norris-LaGuardia Act applies, which provides, in substance, that actions such as that taken by the defendants would not be enjoinable, so that in our judgment, and we respectfully submit it to Your Honor, we think it would be in the interest of orderly procedure and the more adequate determination of all of the issues in the case if we were to proceed with the hearing and Your Honor reserved the legal questions until the conclusion.

I may say as to the hearing, that the Government's intention, with the Court's permission, is to present some—in the neighborhood of ten witnesses, each of whom will be a short witness, each of whom would offer evidence relevant and competent on the issues before Your Honor, whether they are with regard to issues under the long settled equity practice; whether they are with regard to issues under the Norris-LaGuardia Act, or whether they are regarded as issues under the Judicial Code.

The COURT. What is your view about the Court's determination as to the jury, until the question of the Norris-LaGuardia Act is disposed of?

Mr. SONNETT. I think if the Norris-LaGuardia Act is applicable, the Court need not reach the question of any trial, because, if the Act is applicable, why, it would render lawful the action taken by these defendents which is set forth in the Government papers.

6 The COURT. The Court does not think that, sir. The Court thinks that the Court is the judge of its own jurisdiction, and that even if the Norris-LaGuardia Act applies—this is tentative—even if the Norris-LaGuardia Act applies, the offense of contempt would still have been committed, although the penalty might be very different.

Mr. SONNETT. To which view, of course, the Government subscribes, as we set forth in our brief filed at the last hearing, but because the Court has a ground of jurisdiction here, irrespective of the application of the Norris-LaGuardia Act, that we think this would not be prejudicial to the defendants in the slightest if the Court should reserve decision of the legal questions until the completion of the proof which the Government offers.

The COURT. If the Court took that view, what should the Court decide to do about the jury; whether the jury should be an advisory jury or whether it should be a jury with all the rights and powers that they usually have?

Mr. SONNETT. In our judgment, if the Court please, since there is a specific provision of the statute pursuant to which a contempt proceeding, initiated by the United States, there is no right to have a jury trial, I think that, as a matter of right, the defendants are not entitled to the trial by a jury under any construction of the law. However—

7 The COURT. Even though the Norris-LaGuardia Act applies.

Mr. SONNETT. Even though to some extent the Act would apply. However I must suggest this, to Your Honor, most respectfully, that the Government is prepared, if Your Honor so desires, to proceed whichever way the Court desires. If Your Honor desires to proceed first on the argument of the legal question the Government will be happy to offer such argument.

Mr. HOPKINS. May it please Your Honor, the defendants on yesterday having filed a motion to vacate and discharge the rule, it occurs to the defendants that the suggestion as first announced by Your Honor, to-wit, that you dispose of that matter is the proper one. We have this morning served upon Government counsel a memorandum in support of the motion to discharge and vacate. I should like to file with the Clerk now copies for Your Honor and for the Clerk's files. We believe, sir——

The COURT. The Court thinks it is proper for the Court to observe at this time, because counsel may in the future desire to file memoranda, that they ought to be filed and exchanged at the earliest possible opportunity. In this instance, as I understand it——

Mr. HOPKINS. If you will pardon me——

The COURT. The Government has had no opportunity at all to examine the brief.

8 Mr. HOPKINS. Your Honor, we are thoroughly in accord with that, sir. We found ourselves in extraordinary difficulty just as the Government did on Monday, that they were unable from the expenditure of time and effort to serve us until we were in the courtroom, and I say to Your Honor it was 1 o'clock this morning until this was completed.

The COURT. It does not apply to one side alone, sir.

Mr. HOPKINS. We will undertake to expedite and complete at the earliest possible moment.

Inasmuch as this motion is pending, Your Honor, we feel that the point was well taken that would perhaps lead Your Honor to an early conclusion upon the subject. We respectfully suggest to you, sir, that the procedure you have outlined to-wit, to proceed upon the argument

of the motion to discharge and vacate is not only acceptable to the defendants, but we think entirely proper, if it meets with Your Honor's approval.

Mr. SONNETT. If the Court please, there has been some discussion between counsel on the question whether, in any event the defendants desired a trial by jury, no matter what their legal rights might be, should the defendants not desire a trial by jury, assuming that they are entitled to one as a matter of legal right, we think the question becomes moot at this time, and accordingly ultimate decision can be reserved until after hearing.

9 I don't know that Your Honor should properly be guided by a consideration of the Norris-LaGuardia Act at this time. If the defendants, in any event, do not desire to avail themselves of whatever procedure and advantage they might have under the Act, I would respectfully suggest that Your Honor ascertain whether the defendants would desire a trial by jury, if the Norris-LaGuardia Act were held applicable.

10 The COURT. Now, Section 111 of Title XIX of the United States Code Annotated reads as follows:

"In all cases arising under Sections 101 to 115 of this Title"—That is the Norris-LaGuardia Act—"in which a person shall be charged with contempt in a court of the United States as herein defined, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the contempt shall have been committed."

Now, I presume that defendants can waive their right if they see fit. There is probably no question about that.

Mr. HOPKINS. Your Honor, I am not prepared to waive the question of the trial by jury at this time. It is only right to say that it might be a matter of consideration by the defendants later on. But we are no prepared to waive it, sir, and we feel arguments upon the motion would be the proper procedure to meet your Honor's approval.

The COURT. Proceed, sir.

Mr. HOPKINS. If it please your Honor, in that regard, the questions involved in the motion are set out in five points, as your Honor has observed. The memorandum that we have filed with your Honor is in full support of all those points. Because these points are varied

11 and there are many questions, perhaps, that would and will arise in the discussion legally of the several points, it is the desire of counsel for the defendants, in order to save the Court's time and for usual reasons, if the Court be amenable, to reserve the right to allocate the argument among the defense counsel on the various points.

The COURT. That is perfectly satisfactory.

Mr. HOPKINS. That being the case, your Honor, we should like to ask Judge Padway—Joseph A. Padway—to present the argument for the defendants at this time on Points 1 and 5.

The COURT. All right, gentlemen. But just one minute.

As far as I know, we will have Court here on Friday. It has been suggested that Court be held tomorrow, but I have been in consultation with the Chief Justice, and he agreed with me that some years ago we made careful exploration of the law and reached the conclusion that it is not legal to hold a proceeding of this kind on a legal holiday.

That makes it impossible to hold any Court tomorrow. I mention that only because it has been discussed.

Now, will you proceed, Mr. Padway, please.

12 / STATEMENT OF MR. JOSEPH A. PADWAY

Mr. PADWAY. May it please the Court, our motion is premised primarily on the fact that the Court had no jurisdiction to issue a restraining order in the first instance.

Now, that is premised on the fact that the Norris-LaGuardia Act is applicable to this proceeding which involves a labor dispute as defined in that act. Now, if the act covers this dispute—the nature and character of it—and if it is a dispute as defined in the act, and if the Court—the Government, rather—is a party to this proceeding and bound by that Act, then the Court had no jurisdiction to issue the decree in the first instance.

It is not necessary, for the purpose of presenting that argument, to go into the merits and the issues as set forth in the complaint. By that I mean whether or not a contract had been entered into between Mr. Krug and Mr. Lewis for the respective organizations.

The COURT. The Court agrees with that.

Mr. PADWAY. So I shall not trespass, unless it becomes necessary for the purposes of continuity in the argument at this phase of the case, on the facts in issue set forth in the original proceeding and the complaint filed.

Now, it is well, I think, in a proceeding of this nature, that has
13 such serious implications, although in doing so the Court may be familiar with what I am going to say, but I think it will bear repetition, to review briefly the history of the Norris-LaGuardia Act.

The COURT. Mr. Padway, this is a matter which requires most careful consideration by all of us, and your time will not be limited. Proceed in your own way.

Mr. PADWAY. I appreciate that very much.

The Norris-LaGuardia Act came to the attention of Congress in 1927, I believe. It came to the attention of Congress because there was a great hue and cry against the issuance of injunctions in labor disputes by the Federal Courts. It was distinctly and avowedly aimed at the procedure adopted by Federal Judges with respect to injunctions in labor disputes.

That was not new, in 1927, because in truth and in fact, however, there had been an outcry against what is commonly or was commonly termed government by injunction as far back as 1907, perhaps earlier than that, but it may not have been of such public interest as it was at that time.

In 1907, I think, as a result of forces in this country—labor and others who were opposed to the injunctive device in the particular instances in which it was used,—and more energetically on the part of Theodore Roosevelt, who urged seriously that government by injunction should be abolished. Joined with him, as I recall, was
14 Robert M. La Follette, then United States Senator from the State of Wisconsin.

The matter came to the attention of the public and to the various political parties, then as now dominant in this country. It is significant that in the platforms of the Republican Party and the Democratic Party in 1912 there were contained planks on the part of both, portions of which I shall read later, agreeing, or at least promising, that government by injunction would be curbed—either limited or entirely abolished.

As a result of the promise made in the political platform of the Democratic Party, and when Mr. Woodrow Wilson became President of the United States there were introduced in Congress amendments to the Anti-Trust law—to the Sherman Act of 1890. These amendments took the form of the Clayton Act, sponsored, I presume, by Mr. Clayton, and receiving his name.

There were two sections in those amendments in the Clayton Act that have particular significance to the argument I am addressing to the Court this morning. There was what was known as Section 6, which made this definite statement. It may not be as definitive as this other statement, but it was in the nature of a declaration, and the opening phrase is that the labor of a human being is not a commodity or an article of commerce.

15 True, in that respect, that section at that time had application only to antitrust laws, but its significance is in this: That Congress intended to distinguish between the labor of a human being and the commodity he produced and the labor itself, the labor that goes into the commodity in its production, and, *and* after producing, the commodity itself. Congress said that that labor which was used in producing a commodity, whether it be labor of the head or mind or of muscle and brawn, nevertheless, that, in and of itself, was entitled to a separate classification, and a separate treatment by the applicability of laws expressly to that particular phase was embraced within the Act. The labor of a human being is not a commodity or article of commerce.

16 Now then, the Congress took cognizance of the fact that men who work in factories, mills, and mines are laborers; they are workmen. Men who have exercised their energy and skill in the production of a commodity are entitled to certain protective devices that were to be embraced within the Act. What were those protective devices?

Moving from Section 6 to Section 20 those protective devices are included in that section, and it is significant, if you please, to follow the language of that section because it is still applicable law. Your Honor is still governed by the provisions of Section 20 in the determination of the issue presented to you in this contempt proceeding this morning.

Section 20— and you, this is included in the antitrust laws by protective devices dealing expressly with the injunctive decree, and it was announced by the particular party who then controlled the administration that that was in fulfillment of their pledge to abolish what is known or was known as government by injunction—Section 20 of the Clayton Act states as follows: "Statutory restriction of injunctive relief.

"No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees or between employers and

17 employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of,

a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property rights must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

"And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor"—and may I pause here for a moment to remark that the pleadings in this case, both in the original suit and in this ancillary proceeding, if it may be termed that, seek to do that very thing, namely, from terminating any relation of employment or from ceasing to perform any work or labor.

If there ever was a command to go back to work, to abstain from ceasing your work singly or in concert, this decree, the original order made by Your Honor, commands that very thing.

"or from recommending, advising, or persuading others by
18 peaceful means so to do;"—And that is precisely applicable to Mr. Lewis, who is the president of the United Mine Workers—"or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph"—and I shall repeat that, if Your Honor please, because up to this point we have dealt with procedural law, with what the Court shall not do in the matter of procedure, what injunctions they may not issue; but at this particular point Congress added after a semicolon this significant sentence, after it had enjoined upon the Federal Judiciary and upon private parties
in their applications the issuance or the demand for such injunc-
19 tions, it then said this—it converted all this adjective on procedural law into substantive rights by stating—"nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States."

What was procedural was now converted into substantive rights, substantive law, and it made these items herein referred to, such as the right to cease employment, the right to cease in concert or singly, and the right to have others, their officers, their representatives, or among themselves, if you please, go on and do these things, and it said that every man had the right—he need not be an officer of the organization; he need not be a member of the same organization—but as a citizen of the United States he had the actual right to advise and encourage and induce and persuade by peaceful means any person to join with them or to do the things that are herein referred to, namely, the cessation of employment, singly or in concert. Those become substantive rights, and although it became substantive that law was still the law of the United States.

Now then, strangely enough—I might even say not strangely enough—the courts had exercised such great and extraordinary power when this Act came down—and I do not say this disparagingly of the judiciary; I merely state it as a fact—they were reluctant to release the exercise of the powers that they had exercised prior
20 to this particular enactment. They were desirous of continuing to do the things that they had done, and issued decrees they had previously issued. And so by clever argument on the part of counsel they were induced to say that this enactment was nothing more than a restatement; it had always been the law, and being so, having developed that, it was easy for them to hark back to the former precedents and each precedent prior to the enactment of this law and utilize them and continue in the same manner as they had acted and had proceeded prior to the enactment of this law.

That was very significant and, and as I will point out when I come to the discussion of the Norris-LaGuardia Act, emphasized as an activity or a procedure on the part of the judiciary that was wholly unwarranted.

What cases were there in which that was outstanding? Well, there are three cases that demonstrate the point that I am making, which is that the judiciary gave no credence and no support and they refused to accept this enactment.

One case was the Tri-City case. In that case there was a strike in Illinois, a foundry strike, and there Justice Taft writing the opinion curtailed the powers of picketing.

He assumed in that case that picketing in and of itself was an evil, much as the statute said that if it is peaceful, if its purpose is to persuade and induce others to join the ranks and assist them in
21 the particular controversy they have, nevertheless Justice Taft held that in a strike involving some 1,500 persons three pickets were sufficient, one at each entrance. He didn't like the term "picket"; said it was a military term; it denoted soldiering and militarism, and gave them the rather euphemistic and rather poetic term of "missionaries." Three missionaries, he said, would be enough in this particular place.

In other respects he curtailed their rights again, and the Tri-City case is analyzed in the Congressional committee report in support of the Norris-LaGuardia Act and severely condemned.

The next act on the part of the judiciary and those who came before the judges to oppose the full efficacy of this law was another development, namely;

Well, suppose this is the law, they said, and the judges are bound by it, in what class of disputes and in what nature is the judiciary enjoined from the issuance of these injunctive decrees? In labor disputes. And then arose the question what constituted a labor dispute, and in the Duplex Printing Company case—the name of the judge who wrote the opinion escapes me for the moment—but by a divided court it was there held that the dispute had to be one of employer and employees who stood in proximate relationship with respect to master and servant.

22 My associate reminds me, I think it was Mr. Justice Pitney in that case. He held this: That where there was a strike of machinists called by the International, in connection with the construction, the building and maintenance of printing presses, and these presses came, let us say, from the place where they were manufac-

tured, which was Grand Rapids, Michigan, to New York, and the New York members of the same union called upon to erect those presses refused to do so, the court held that they were not parties to the dispute; that they had no interest in the matter, and by injunction compelled them, also in the negative as this injunction is, to refrain from ceasing employment or refusing to work on those presses.

In all the history of labor, if Your Honor please, with the exception of one case, has there ever been such condemnation on the part of Congress as there was in connection with the issuance of that injunction.

The next case which classically portrays the point I am making was the Bedford Stone Company case, another Taff-Vale decision like that of England which almost wrecked the Government of England then in power and which has since been repudiated—in the Bedford Stone Company case, men were on strike in Bedford, Indiana, in the quarries, and there the stone was shipped again to places like New York, and particularly Colorado, since that is mentioned in the opinion, and when the stone came to Colorado members affiliated with the same
23 union, interested in the same problem, governed by the same rights and interests, refused to work on that stone, and the United States Supreme Court ruled that the men could not quit in concert and had to remain at work regardless of Section 20 of the Clayton Act.

That decision—as I said before it was an exception to the Duplex Printing Press Company case—was the one that was most severely condemned. To compel men to return to work or to refrain from seeking employment was shocking.

And there were, I think, three or four dissents—the then, or for all time, the great liberals on the Court, Justice Holmes, Justice Brandeis and I believe Justice Clark—there may have been one other; it may have been a 6 to 3 or a 5 to 4 decision; since these dissents have now become the law by the majority of the Court, I will ask your indulgence to read this very significant statement on the part of Justice Brandeis. He said:

"Members of the Journeymen Stonecutters' Association could not work anywhere on stone which had been cut at the quarries by 'men working in opposition' to it, without aiding and abetting the enemy. Observance by each member of the provision of the constitution which forbids such action was essential to his own self-protection. It was demanded of each by loyalty to the organization and to his fel-
24 lows. If, on the undisputed facts of this case, refusal to work can be enjoined, Congress created by the Sherman law and the Clayton Act an instrument for imposing restraints upon labor which reminds of involuntary servitude."

25 Mr. PADWAY. How well does that fit within the facts, or, rather, the request for an injunctive decree in this case?

This Court has been asked to issue a decree, and the decree, read in the light of its language, does just that very thing; it creates—rather [reading]:

"If on the undisputed facts of this case, a refusal to work"—and that is just exactly what they seek here. They seek to call off orders, not for the purpose of having an insignificant or inconsequential act performed, but to compel men, who, at least as far as they believe, for

just grievances, have ceased to work, to go back or abstain from not working. [Reading:]

"Refusal to work can be enjoined. Congress created by the Sherman Law"—and it makes no difference whether it be the Smith-Connally Act or any other law which they passed before or since this decision—"Congress created by those laws an instrument for imposing restraints upon labor which reminds of involuntary servitude."

Now, these decisions aroused right thinking people in this country. It aroused Congress. For a time there was considerable discussion concerning it, and then, in all such circumstances or historical
26 events of moment or consequence, they having been discussed for some time, it cools off and very little is done.

But then came the 1922 strike, and the railway shopmen's strike, before a Federal Judge, at the behest of the Attorney General, behest of the Government, as in this case, presented an injunctive decree, and it was signed by a judge—Judge Wilkerson at Chicago—and that decree containing many of the things that are in this decree before this Court, and other matters besides, was the pattern, if your Honor please, for the issuance of in excess of 350 other injunctions, and every one of them ex parte.

That really brought into play and into discussion "Where are we going to?" "What will this lead to?"

350 pleadings, all mimeographed and on the same pattern; 350 decrees issued by Federal Judges throughout the country, all of the same pattern and containing the similar restraints, and the country became aroused; and then the discussion continued and became so forceful that it led to the introduction of a bill in Congress in sometime of 1926 or '27, at least early in '27, a bill which was then known as the Shipsted bill.

Senator Shipsted, of Minnesota, introduced that bill. He worked in that bill with a gentleman whose name is revered in labor, and who did much for the people he represented, and he was a Norse-
27 man, Andrew Volstead, who represented the Seamen's Union in this country.

He brought them out of the depths of degradation and made of a sailor, at least, a human being.

Now, Shipsted went to work on that bill, and, in the discussion of it, it was soon found that it was inadequate. The attempt was well, but the inadequacy of the provisions required more study and the framing of a different bill.

There was then called in a number of persons to testify respecting matters that had—or experience—brought to the attention of these persons as the result of injunctive decrees in labor disputes. I think the hearings were continued for about 4 years. It was my privilege at that time as general counsel of the Wisconsin State Federation of Labor, representing some of the unions, to be called before that committee to express myself respecting the law as we had in our State at that time, which we considered very liberal, and also with suggestions to afford suggestions respecting a bill.

My testimony may not have been of consequence, but there were persons of consequence who were students of the subject, and who were able to enlighten the committee.

The subcommittee in the Senate was headed by Senator Norris. The Subcommittee of the Judiciary Committee in the House
28 was headed by LaGuardia; and thus the bill took the name of the Norris-LaGuardia Act.

Four years that bill was under discussion, and no particular group or person who had something to say was refused his say.

I remember in the morning of the afternoon I testified I had been preceded by Mr. Emery of the Chamber of Commerce, and he testified subsequently thereto.

It was thoroughly discussed and thoroughly considered, and then in 1932, by almost a unanimous vote Congress adopted that bill, and it was signed in 1932 by President Hoover.

Now, I may, at this moment, without undue modesty, say that Wisconsin had preceded the United States and was the first State to adopt a Norris-LaGuardia Act, and thus it was my privilege to have assisted in the framing of it and appearing before its legislative committees in an effort to have it passed in that State. I was then practicing law in that State.

Now, the Norris-LaGuardia Act is premised not only on "don'ts" and "inhibitions," but it had a real philosophy, if the Court please. It had a philosophy of equalizing the respective powers of employer and employee which has been the foundation stone of much legislation enacted in recent time. It recognized the weakness of employees and even their organizations to cope with the rights which were
29 then accorded employers to discipline, discharge, and to do what they pleased with the aid, if you please, by the aid of the federal judiciary.

Now, I do not intend to make general statements respecting the judiciary, the federal judiciary, at that time. Congress did that, and in all the history of judicial bills and jurisdictional matters of that classification which came in the nature of bills before Congress, never was the federal judiciary castigated as it was by the respective committees with respect to activities in the injunctive process.

Congress said in that hearing, and—by the way——

The COURT (interposing). Now, Mr. Padway, I was in Congress at the time.

Mr. PADWAY. I think you voted for the bill, so I think what I say cannot apply to your Honor.

The COURT. There is not any question about my voting for the bill.

Mr. PADWAY. Yes, but I am stating about the history.

Congress did well. What Congress did was to pass the bill.

Your, sir, and your colleagues, are the ones who castigated the judiciary, adopting that report, which was adopted almost
30 unanimously. You agreed that what was then said respecting the judiciary was correct, and furthermore the base and foundation of what you said was this:

"To take the judiciary out of the injunctive process and not become an aid and a party to those who were opposed to organized labor and its demands and its disputes and its grievances,"—almost the opening phrase of the Committee's Report said:

"This bill is the so-called anti-junction bill. It is the outgrowth of years of agitation in the Congress for restriction upon the powers of federal equity courts in the issuance of injunctions in labor disputes.

"Hearings have been held by Congressional committees over a

period of years, and the facts adduced have brought about an almost unanimity of opinion that such powers of the Federal Courts have been exercised to the detriment of the public welfare and should be curbed.

And that, if Your Honor please, is why we here today are so apprehensive. That is why labor and its organizations are so apprehensive, that the Government should be the means and the instrument to return to those days that were so vigorously condemned in this Report and to again place upon the shoulders of the Federal judiciary or attempt to place upon its shoulders the sort of decree and [illegible] procedure that was so vigorously condemned by you, sir, as a member of the Congress and by the Congress of that day.

Well, what is this Norris-LaGuardia Act?

The Act is significant for its public policy. Now, in the argument presented in the brief, I get the impression—I don't know whether others do—

The COURT (interposing). You mean the Government's brief?

Mr. PADWAY. The Government's brief—get the impression as though everybody is bound by declared public policy of the Government; that what has been announced by Congress to be sound public policy and shall govern everyone is not to apply to the Executive department of the Government.

I will come to that in a moment, to the portion of the brief that I am referring to, but that, in substance, is what I consider they claim.

Now, then, public policy, I think, is binding upon the Government as well as upon its citizens, because it is the citizenry that makes up [illegible].

In the public policy—and let me say this, that it was not the fashion at that time for Congress to preface bills with preambles. It had been done before, but it was not very popular. Only when Congress wanted to make findings respecting conditions and the evils that existed so as to show the basis for the enactment of these laws, to abolish those evils, do we find preambles and policies—here is the public policy declared in labor matters.

In fact, it reads that way, Section 102, "Public Policy in Labor Matters Declared."

"In the interpretation of this chapter, and in determining the jurisdiction and authority of the Courts of the United States"—I emphasize the word "jurisdiction"—"as such jurisdiction and authority are defined and limited in this chapter, the public policy of the United States is hereby declared as follows:

"Whereas, under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize into corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representa-

tives or in self-organization, or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of and limitations upon the jurisdiction and authority of the Courts of the United States are hereby enacted."

Now, when we are dealing with the question of jurisdiction that is where we have to look to with respect to labor disputes to the Norris-LaGuardia Act, unless—and I will meet that contention later—the Government contends the Act does not apply to the Government; and I will address myself to that in a few moments.

Now, what did it say? [Reading:] "Enumeration of Specific Acts Not Subject to Restraining Orders or Injunctions."

This is Section 104 [reading]:

"No Court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as those terms are herein defined) from doing, whether singular or in conference, any of the following acts:"

34 Now, unless the Government is right that there is an implied exception with respect to the Government on that matter, that is binding on the Government and on everyone else, and may it please the Court, there is no exception in this Act in favor of the Government, and this is a limitation upon the jurisdiction of the Court with no exceptions whatever, and we counsel—

35 This is a limitation upon the jurisdiction of the court with no exceptions whatever, and when counsel in their brief tried to make exceptions in favor of the Government, they framed the very language in this law, because this law, if the Court please, has two fundamental purposes, one to protect the rights of labor, and the other to limit the jurisdiction of the Federal Courts, and the limitation of that jurisdiction with respect to the Federal Courts makes no exception with respect to the Government, and it does not need any. Why? The United States District Courts are the creatures of Congress; they are not, as might be termed, constitutional courts.

The COURT. Yes; they are constitutional courts.

Mr. PADWAY. Well, that is a debate that has been carried on for years, and at least so far as the Norris-LaGuardia Act is concerned, and the committee reports—I will leave the committee reports with you—it was at least stated—that may have been in error—those who stated it——

The COURT. The Supreme Court has held that they are constitutional courts.

Mr. PADWAY. I am glad to know that. That is wholly immaterial. The Constitution, as I understand it, provides for one court: The Supreme Court of the United States; and then such other courts

36 as Congress may from time to time create. That makes a constitutional court. I think Your Honor will agree with me that in creating the District Courts by authority of the Constitution, the jurisdiction in that court is just such as Congress gives to it.

Now, Congress gives to the District Courts of the United States probate jurisdiction, as it does; and gives to the United States Court in the District of Columbia divorce jurisdiction, as it does. It has

that jurisdiction. Yet the courts in the States—the Federal Courts—have no such jurisdiction; that has been exclusively left to the States. If Congress were to invest the Municipal Court of the District of Columbia or the District Court with certain powers, they would have them. Congress did, I believe, in 1912 abolish the United States Circuit Courts and made them Circuit Courts of Appeals, thus depriving them of all the jurisdiction they had. That very thoroughly demonstrated the value of the hearings and studies that have been made, which found, namely, that the limitations of the power and the jurisdiction exercised by the Federal Courts are only that which Congress has prescribed and granted to them. I will refer to that more particularly in a moment.

If Congress desired to take away from this Court the jurisdiction to issue injunctions in labor disputes, it had the right to do so. If it wanted to delimit it, it had the right to do so. If it wanted to set
37 up conditions precedent, it had the right to do so; and nowhere—I challenge counsel to produce a case that says that this Court in the appropriate proceedings, in the appropriate cases involving labor disputes, as defined in the Norris-LaGuardia Act, has jurisdiction to go beyond that Act.

It says, and just bear in mind the repetition of one line: "No court of the United States shall have jurisdiction to issue any restraining order"—and here is the jurisdiction prescribed, or rather delimited, denied, settled once and for all, with respect to the evils that were complained of—Congress said this: "And whether singly or in concert (a) ceasing or refusing to perform any work or to remain in any relation of employment."

That is the very thing we are here about. That is the heart of the issue involved in the Government's case; namely, that this court is asked to issue a decree, to issue a decree which will prohibit us from ceasing or refusing to perform any work or to remain in any relation of employment. That has been enjoined, if the Court please, in the decree which was issued; becoming or remaining any member of a labor organization or of any employer organization, regardless of any such acts of undertaking or promise, as is described in Section 103—we are not involved in that, because that is the anti-yellow-dog provi-
sion, with which we need not concern ourselves in this case—
38 paying or giving to or withholding from any person participating or interested in a labor dispute, any strike, or employment benefits or insurance, or any other things of value.

Why was Congress concerned with that? Because of the parallel history that is taking place in this court this morning; because the United Mine Workers—because the president—the then president—of the United Mine Workers, who is the same gentleman here before you this morning as a defendant, was enjoined in Indiana and other places and commanded not to pay strike benefits. As it says in the committee report, the miners could starve, the miners could drop from physical exhaustion and for want of food; nevertheless, the injunctive decrees were issued by the courts in that day, of that type and character, and we will return to them as surely as anything if the Government can sustain its position in this case. If the Government can say, "You shall not work"—Your Honor, I feel—I don't know whether the Government will come in and say or argue—if the Government finds

that Mr. Lewis is paying strike benefits to his members—"Are you paying strike benefits to your members? You will stop that or be in contempt."

My associate here tells me that it is by this language, at least by implication, "and from coercing, instigating, inducing, or encouraging mine workers in bituminous coal mines in the Government's pos-
39 session, or any of them, or any person, to interfere by strike, slow-down, walk-out, cessation, and so on."

The COURT. That is prohibited in the Smith-Connally Act, Mr. Padway.

Mr. PADWAY. The Smith-Connally Act is an entirely different matter. We will come to that. It is prohibited in the Smith-Connally Act, but my short answer to that is this: The Smith-Connally Act is not a constitutional enactment. No court has yet said it is. We have tried to get that upon three or four occasions. We want to test those things.

The Smith-Connally Act was much more careful than the Government was in this case to preserve the rights. At least, in the Smith-Connally Act, with its restrictions and enjoinders, a single individual may quit work. There is no such inhibition here. In the Smith-Connally Act, as you will notice, a single individual has a right to quit, and it says the court shall not issue a decree or do anything restraining that. We have no such restriction here.

If Mr. Lewis was the only man who went out on strike, your decree affects him, or whoever ceased employment.

Now, by all lawful means, aiding any person participating or interested in a labor dispute, who is being proceeded against in or
40 who is prosecuting any action or any suit in any court of the United States in any State.

Unless one is familiar with the history of labor, unless one is familiar with the provisions to which this is applicable, it would be hard to understand why. I will tell Your Honor why that provision was put in there.

There were Federal judges, if you please, down in Virginia and other places, that, when cessation of employment took place on the part of miners and mines that provision there had those miners and mines directly in mind, and the miners' interests, who lived in Government houses, and who were evicted from those Government houses by justices of the peace, and the like, who were company-dominated or company-controlled, and then when the mine workers decided to remain on strike and put up bonds on appeal, so that they might occupy their houses pending appeal, the Federal Courts enjoined the bonding companies, if you please, lawyers, and others, from aiding or assisting those miners in remaining in the homes that they occupied.

It was necessary for Congress to overcome evils such as that, evils written into injunctive decrees.

The COURT. What you are trying to do is to blame all of that on this Court. I am listening very patiently, but I am not responsible for any of that.

Mr. PADWAY. I am not trying to do that at all. What I am trying to do is this: I am trying to prevent the Government from bring-
41 ing back those conditions through such decrees. I am showing it to show that Congress has taken that jurisdiction away.

Now, if the Court please, it has been exercised here—and I do not say this ungraciously or disrespectfully—but it has been exercised here and what I am trying to say is that Congress had these very things in mind and took it away.

Now, the Government says it has not been taken away and that you have the right to exercise it. What are these things but protection to the miners? The miners were told by Congress, "You will no longer be confronted with a decree by a Federal judge."

The COURT. Mr. Padway, you may be right, but what you are unconsciously contending is this: That when society itself endeavors to protect itself from hunger, starvation, cold, a letting down of production and unemployment, social disintegration, it is engaged in a labor dispute. You may be able to vindicate that position, but that is what you are contending now.

Mr. PADWAY. I am contending that there is here a labor dispute, and the Government may contend that, but we do not concede it—we do not concede that we are doing that which the Government says we are doing. On the contrary, there need not be that, if the Government takes the position it should take under its agreements and its
42 contracts. The miners are not subject to what we contend is a violation of contract on the part of the Government, and yielding to the Government's interpretations. That is involved in the original suit, and when that suit will be tried, if it is, when the time comes to try that suit the false impression that the Government has endeavored to leave, and the impression that the columnists and writers have endeavored to leave, will be wholly dissipated by presentation of the most justifiable reasons for the miners' conducting themselves as they have.

There need not have *any* been any cessation of employment and there need not be today if the terms and provisions of the contracts that were entered into were complied with by the Government.

First, the Government, as we contend, breaches the contract and cries out and says, "You, sir, are this and that." That goes to the merits of the principal case, which I said I was not going to argue.

Let us see. I do not know whether it is necessary for me to argue that we have here a labor dispute. If it is, I will present it; I will go right down to that, from the very correspondence that Mr. Lewis and Mr. Krug and Mr. Cullison went into.

The COURT. Calling it a labor dispute does not make it one.
43 Mr. PADWAY. No, but the facts that constitute a labor dispute make it so.

The COURT. You are correct about that.

Mr. PADWAY. Now, in view of that, I should like to go to the facts.

If the Court please, Section 13 (c) of the Norris-LaGuardia Act provides in part as follows:

"The term 'labor dispute' includes any controversy concerning terms or conditions of employment."

The Government does not contend that there is no controversy over terms and conditions of employment. The very reply on the part of the Government was this: You, Mr. Lewis, you go to the private owners and take up with them the terms and conditions you seek.

The very correspondence that Mr. Lewis engaged in was to call attention to certain grievances which are the very essence and foundation of a labor dispute

I do not know; the Government may say that there is no labor dispute, on the theory, as it set forth in its brief, that there can be no labor dispute with the Government. That is one thing; but to say the facts and circumstances in this case do not pose a labor dispute—that is simply to deny plain and elementary facts.

The very possession of the mines in the Government is a labor
44 dispute, and Congress in the Norris-LaGuardia Act said a labor dispute shall be those things that grow out of labor cessation; and if this cessation of employment has not grown out of a labor dispute, I do not know what has.

My associates, in a brief prepared—I was absent from the city when this happened, but I have read it very thoroughly, and the brief has been filed, but I should like to take the opportunity to read this page:

"That this case involves a 'controversy concerning terms or conditions of employment' will not, indeed it cannot, be denied. It is affirmatively and unequivocally set forth in explicit terms in the pleadings filed by the plaintiff. Thus, the immediate controversy which eventuated in the notice of November 15, 1946, was initiated by the Lewis letter of October 21 addressed to the Secretary of Interior. Mr. Lewis stated to Secretary Krug that the Government has misinterpreted the agreement respecting 'pro rata vacation payments' and in interpreting the manner in which 'railroad weights rather than tipple weights' were being used 'to compute the payments due the welfare and retirement fund,' both of which clearly as encompassed within the statutory phrase 'terms or conditions of employment.' In addition, in that letter Mr. Lewis requested a conference 'for the purpose of negotiating new arrangements affecting wages, hours, rules
45 * * * and all other pertinent matters * * * which too clearly is within the meaning of the statutory phrase 'terms or conditions of employment.'"

Let us for a moment dismiss from our minds the Government. Let us consider in terms of X being the party on the other side. I think I can safely say that this court would rule that each demand constitutes a labor dispute. If they do not constitute it, if demands concerning wages, hours, and working conditions do not constitute a labor dispute when the parties cannot agree, then I am at a loss to know what does constitute a labor dispute. Then the definition is wholly without merit.

"In response to that letter Capt. Collisson wrote Mr. Lewis on October 22 wherein he stated the Administrator's readiness to meet with the Union and said, 'It is suggested that any negotiating conferences looked toward a new agreement be had with the representatives of the owners of such mines.'"

By the way, if the Court please, these are exhibits attached to the complaint. The Government has brought that to your attention, and it is before you by the Government's own conscious admissions or inclusions.

Now, isn't that an admission that there is a controversy respecting these things?

46 The COURT. Mr. Padway, first I would like to ask you whether or not it is your contention that the United Mine Workers of America, under the Krug-Lewis agreement, are not subject to Section 6 of the Smith-Connally Act, which provides:

"Whenever any plant, mine, or facility is in the possession of the United States, it shall be unlawful for any person (1) to coerce, instigate, induce, conspire with, or encourage any person, to interfere, by lock-out, strike, slow-down, or other interruption, with the operation of such plant, mine, or facility, or (2) to aid any such lock-out, strike, slow-down, or other interruption interfering with the operation of such plant, mine, or facility by giving direction or guidance in the conduct of such interruption, or by providing funds for the conduct or direction thereof or for the payment of strike, unemployment, or other benefits to those participating therein. No individual shall be deemed to have violated the provisions of this section by reason only of his having ceased work or having refused to continue to work or to accept employment."

47 Now, it is your contention that under the terms of the Krug-Lewis Agreement, where the Government had taken over the mines, that the United Mine Workers of America are not subject to the section of the Smith-Connally Act which I have just read?

Mr. PADWAY. In the first place, Section 6 of the Smith-Connally Act is a criminal section. It will be observed, it provides criminal penalties. If there were a criminal proceeding here, the Government could make that contention.

This, however——

The COURT. That is not what I asked.

Mr. PADWAY. But it is leading up to the answer to what you asked, Your Honor.

This is an equity proceeding, a request for an injunction in a labor dispute, and there is nothing in the Smith-Connally Act that says that the Norris-LaGuardia Act is inapplicable; nothing whatever, and, if Your Honor will read the National Labor Relations Act, you will see that where the Government seeks injunctive decree to enforce that Act, it specifically says that the Norris-LaGuardia Act, in the relief sought by the Government under that Act, shall have no application and that is why the Smith-Connally Act is still applicable regardless of Section 6 of the Act you have before you.

48 The COURT. I know; but, if you prefer, the Court will not compel you to answer.

Mr. PADWAY. I will answer. I don't want to hedge. I say that doesn't confer jurisdiction upon you, that which has been taken away.

The COURT. But, first, do you say it is not applicable to the United Mine Workers of America?

Mr. PADWAY. If it were a criminal case, while we wouldn't plead guilty to a violation of the section, it would be applicable to the issues.

The COURT. Another thing you are arguing, sir, is: That under the terms of the Lewis-Krug agreement, and under the Smith-Connally Act, that you have no provision which would give you an opportunity to air your legitimate grievances.

Now, Section 5 of the Smith-Connally Act is as follows:

"When possession of any plant, mine, or facility has been or shall be hereafter taken under authority of Section 9 of the Selective Training and Service Act of 1940 as amended (Section 309 of this Appendix) the Government agency operating such plant, mine, or facility or a majority of the employees of such plant, mine, or facility or their representatives may apply to the National War Labor Board

(which has now been changed to the National Wage Stabilization Board) for a change in wages or other terms and conditions of employment in such plant, mine or facility. Upon receipt of any such application and after such hearings and investigation as it deems necessary, such board may order any changes in such wages or other terms and conditions which it deems to be fair and reasonable and not in conflict with any Act of Congress or any executive order issued thereunder. Any such order of the board shall upon approval by the President be complied with by the Government agency operating such plant, mine, or facility."

Now, are you contending that you had no means of redress for grievances under Section 5 of the Smith-Connally Act?

Mr. PADWAY. Now, if the Court please, that particular section that you have read now, and the question you have put, is involved in the main issues of the case. I got back from Honolulu yesterday afternoon at 2 o'clock. I have worked as hard and as fast on this case as possible, and lest I be not too well informed on that phase, my associate counsel asked me not to concern myself with those issues.

The COURT. The Court doesn't insist on your answering the Court's question.

Mr. PADWAY. Hear me through, please.

I want the Court answered, because we have briefed it; we have taken it into consideration.

I have a superficial thinking on the subject from the brief, but Mr. Kaiser and Mr. Hopkins, who have worked on this for the best part of the week, know the answer and unless—and lest I make an incorrect answer, would Your Honor permit me to set down for a moment and have Mr. Kaiser answer that point and permit me to proceed?

The COURT. You can do that, or else defer——

Mr. PADWAY. I would rather do that, because I want Your Honor answered.

The COURT. All right.

Mr. KAISER. If the Court please, as Mr. Padway has indicated, the question is more properly addressed to the issues raised on the primary case.

The COURT. Yes; but the difficulty is this, sir:

For a period of nearly an hour and a quarter the argument of the defendant has consisted in attacks on rulings of the Federal Courts prior to the Norris-LaGuardia Act, and in saying, either by direction or by necessary implication, that under the Smith-Connally Act they had no redress.

Now, it does not occur to the Court that that is a fair argument. We may not have reached that part of the case yet, but at the same time, I have listened to the argument, and it has not seemed to me to be a fair argument.

Mr. KAISER. If the Court please, the reason for the argument, which I should like to be able to state succinctly, is that the Court indicated, very fairly, on Monday, that when this case was brought to your attention, first, you were bothered with two things: one of which was whether or not the Court had any business in this kind of a labor dispute, and, as opposed to that, you had the suggestion——

The COURT. I don't think I called it a "labor dispute," sir.

Mr. KAISER. In this sort of a situation, as opposed to that, the Court was disturbed about a fact that this was a matter of great public interest, and that the sovereign is involved, and you even referred, in what you said, and I respectfully suggest, erroneously—to the fact or to the well-known rule, as you stated it—that laws do not apply to sovereigns unless specifically excluded.

Now, the argument for the past hour and a half was addressed to this particular thesis, that the Norris-LaGuardia Act, out of a long and sordid history, south completely to divest courts which are equally sovereign and part of the Government, from their power to step into disputes and issue ex parte orders and injunctions, and that there is nothing in that history to indicate that whereas these Federal Courts might have abused their jurisdiction, where private employers
52 were involved, that they did not abuse their jurisdiction where the Government called upon them; that as a matter of fact, some of the cases most loudly decried were cases instituted by what counsel now calls the sovereign government.

We respectfuly suggest that the Courts are equally sovereign with the executive department; that there is nothing in the language of the statute which limits it to private persons; and that Congress in the debates and reports was addressing itself to as much the Government actions—that is, executive department complaints—as to anyone else.

The COURT. Those who handled the bill didn't so state, to members of Congress.

Mr. KAISER. If the Court please, an amendment was offered to the Congress to accept petitions filed by the Government; an amendment offered by Congressman Blanton was voted down by some 26 to 200, that precise amendment was offered to the Congress. The Congress discussed the Wilkinson injunction issued by Wilkinson at the request of Attorney General Daugherty. The Congress discussed the In re Debs case, a governmental request or governmental complaint.

Now, we say if the Congress has, which I think must be conceded, full and complete power to set the jurisdiction of the courts, then what we are dealing here with is not with parties or things, but with court jurisdiction. If the court is without jurisdiction, it matters not who invokes that jurisdiction. The Congress did not mean
53 to say that unions or anybody else may unlawfully act. They merely said that this type of situation should not be handled by Federal equity jurisdiction.

Now, because they abuse it, in the case of all parties, what the Government is actually suggesting here, if the Court please, and I don't mean to be facetious, is that it is not right for Federal courts to abuse their equity jurisdiction when private parties call upon the courts; but it is perfectly all right when the Department of Justice asks you to abuse your jurisdiction.

The COURT. Then, if that is their position, I have misunderstood it completely.

Mr. KAISER. If the Court please, in that memorandum, their memorandum, I believe it is about page 8 or 9——

The COURT. There is nothing that has been said to me directly or indirectly by anybody which would bear out your statement, sir, up to this time. I don't know what sins they are going to commit later, but they haven't committed that sin yet.

Mr. KAISER. If the Court please, in their memorandum, as I read it, they simply say that there can be no labor dispute with the sovereign government. That is all they say.

We are prepared to argue, and show conclusively from the
54 record in this case, that this is not a sovereign function of the Government; that the Government has declared that the employees working in the coal mines are not Government employees; that the sovereign is urging upon this union to turn back what Government now calls the sovereign function—conceive of it, Your Honor, a sovereign function—and Secretary Krug is urging publicly that this so-called sovereign power should be returned to private persons.

The COURT. What issue of this case are you arguing now?

Mr. KAISER. I am arguing, if the Court please, what I conceived to be the most important issue. I suggest that the only circumstance in this case which differentiates it from any other case involving the Norris-LaGuardia Act is the fact that this case arises under the executive order of the President, which puts the Government into the business of administering the coal mines. That is the only circumstance in this case which distinguishes it.

The COURT. Didn't the President take it over for the express purpose of having situations like this avoided? Wasn't that the express purpose?

Mr. KAISER. Now if the Court please, the President took over in May, or earlier of this year, and issued a proclamation directing Mr. Krug to take charge; authorized the negotiation of an agreement, an agreement that was then subjected, under article 5 of the Smith-
55 Connally Act, to the consideration of the War Labor Board. That agreement incorporated all the other provisions.

The Government comes to this Court and states that there is—quite accurately—an honest difference of opinion between the Government on the one hand, and Mr. Lewis on the other, as to the meaning of one particular clause in that agreement, namely, the duration clause.

They say there is a genuine dispute, and so they come to this court, not for an injunction, mind you, but to have this Court issue a declaratory judgment as to which of these two parties is correct in their interpretation as to the legal effect of that one clause; and so, they say, there is a doubt. The implication necessarily must be, no one can say at this stage of the proceeding that Mr. Lewis has not correctly interpreted the contract, only the court can say that and will say that. We know not when, but supposing the court does say, at some later date, Mr. Lewis was correct? What kind of comfort will Mr. Lewis or the union members get from a decision sometime in the indeterminate future that "You were right, Mr. Lewis, in issuing your notice of termination back in November, but all this time you have been restrained under the coercion of a lawful order"?

The COURT. The Court doesn't see that picture at all. This is the picture the Court sees. The picture the Court sees is this: That
56 the Court examined this complaint for a restraining order and reached the conclusion that a delay of eight or ten days could not interfere with the union; and, that we would meet here, in formal discussion, talk over the matter judicially and quietly and decide upon the proper interpretation of that contract.

Now, that is what the Court had in mind, and that is what would have been done. That is what would have been done and that is what would have happened and it could not, in the Court's opinion, have injured the union in any way, so that any idea that you may express of the matter being continued from time to time and from month to month is beside the point, sir. It would not have been handled by this Court in that way.

Mr. KAISER. If the Court please, I am not—and I hope the Court does not get that impression—I am not attacking the Court's action as such; I am attacking the complete inconsistency in the complaint itself. The complaint is for a declaratory judgment, as I have stated. The injunctive relief is in the nature of ancillary relief.

The COURT. That is true.

Mr. KAISER. Pending the decision of the Court.

The COURT. That is true.

Mr. KAISER. On the main issue—who is right.

I suggest, if the Court please, that the only propriety for issu-
57 ing a restraining order, forgetting the Norris-LaGuardia Act, I am talking now on direct equity jurisdiction, is to maintain a status quo.

The COURT. That is what the Court was trying to do.

Mr. KAISER. Well now, if the Court please, if Mr. Lewis is correct in his major case, and the Court has not decided, because it has not had opportunity to decide——

The COURT. That is true.

Mr. KAISER (continuing). That he is not correct, then by issuing this injunction, you do not maintain the status quo, sir, but you effectively—now, if the Court please—you issued this injunction as a permanent order, for a ten-day period.

The COURT. It was a restraining order which couldn't run longer than ten days.

Mr. KAISER. That is right.

Now, even if we limit it to that short period——

The COURT. It would have been limited to that period. This Court would have had an immediate hearing, there is no question about that, sir.

Mr. KAISER. Precisely; but the order or notice terminating the agreement, as I recall it, became effective within five days after the order that Your Honor issued. The precise dates Mr. Hopkins will soon give you.

58 My point is that by the terms of the order, itself, it extended beyond, that is, the ten-day period of your order extended beyond the termination date of the agreement, as Mr. Lewis viewed that to be, that is, he considered it to be the correct interpretation of the agreement.

The moment you got beyond midnight, I believe it was November 21, the order effectively granted not status quo relief, but was addressed to the major proceeding and effectively determined that without a hearing.

The COURT. The Court does not agree with that in any sense of the word.

The purpose of the hearing would have been to determine whether the union had a right to conclude the Krug-Lewis agreement in thirty

days, or whether the union had to maintain its relation with the Government as long as the Government had control of the mines, their redress being in Section 5—I mean, their opportunities for redress of grievances being confined to Section 5 of the Smith-Connally Act.

The Court does not take at all the position that the Court's granting of that restraining order decided the question in dispute between the Government and Mr. Lewis.

Mr. KAISER. I know that the Court did not decide—if the Court please, I am not saying that the Court decided; I said it had the practical effect—

59 The COURT. The Court does not think so at all. Whether your position is right or wrong, the Court feels that your attitude in not awaiting a judicial determination was a very great mistake on your part, and the Court, of course, is of the opinion that if you did not obey the restraining order, you would be guilty of contempt of court. But the Court does not pass upon that question at this time. The thing that the Court is passing upon right now is whether or not this motion to dismiss should be allowed.

Now, the Court feels that the answer to the Court's questions have not been forthcoming, and it is not worth while, and probably the Court made a mistake in asking the questions.

The Court will now take a recess for five minutes.

(Short recess.)

The COURT. Proceed.

Mr. HOPKINS. If it please the Court, you, a short few moments ago, asked or propounded a question to Judge Padway, as to which he had not had the time or opportunity, in light of his recent return to the city, to make himself aware of the chronology of the facts that would, as the defendants see it, run directly to the answers to the problems and questions proposed by Your Honor. Therefore, with the desire, Your Honor, to meet the questions squarely in answer, we would like to point this out to Your Honor. I think the chronology will, in

60 and of itself, with a brief statement thereafter, answer the Court's questions.

The contract of April 11, 1945, executed between the Mine Workers and the operators, was national in scope. It contained a section known as Section 15, which I should like to read to Your Honor briefly. It is short and this points out its significance.

The COURT. Proceed, sir.

Mr. HOPKINS. That section of the contract reads as follows:

"This agreement dated the 11th day of April, 1945, shall be effective as of April 1, 1945, and shall continue in effect hereafter subject to the conditions and termination as herein provided. At any time prior to April 1, 1946, in the event a significant change occurs in the Government wage policy, either party shall have the right to request negotiations on general wage rates."

Continuing to quote:

"At any time after March 1, 1946, either party may give ten days' notice in writing of a desire for a negotiating conference upon the matters outlined in said notice. The other party agrees to attend said conference. At the end of fifteen days—fifteen days after the termination of said negotiating conference—either party may give to

61 tin other a notice in writing of the termination of this agreement to be effective five days after receipt of such notice."

Now, sir, chronologically, that contract being in existence from April 11, 1945, to 1946, terminated on or about midnight, April 1, 1946. Thereafter came the work stoppages.

On May 21, the President, by Executive Order 9728 seized the mines, and in that order he directed the Secretary of the Interior to negotiate with representatives of the Mine Workers.

The COURT. Under section 5 of the Smith-Connally Act?

Mr. HOPKINS. Yes, sir. Subject to that—and I want to cover that point—he precisely said that.

On May 29 there was executed the Krug-Lewis Agreement, and that Krug-Lewis Agreement, Your Honor, in section 1, was headed "Provisions of National Bituminous Coal Wage Agreement preserved," the National Bituminous Coal Wage Agreement being the document of April 11, 1945, which contained the provision, section 15, just read to Your Honor. That is the heading of the section—"Provisions of the National Bituminous Coal Wage Agreement Preserved."

"Except as herein amended and supplemented, this agreement carries forward and preserves the terms and conditions contained in all joint wage agreements effective April 1, 1941, through March
62 31, 1943," and that reference is, there, sir, because the agreement of April 11, 1945, carried forward the agreements that had been executed in 1941; and then, in 1943—carries forward the supplemental wage agreement providing for the six-day workweek and all district agreements executed between the United Mine Workers and various coal associations and coal companies as they existed on March 31, 1943; and then carries forward—what, sir? It carries for the National Bituminous Coal Wage Agreement dated April 11, 1945, containing Section 15.

The COURT. Is it your contention that Section 5 and Section 6 of the Smith-Connally Act do not apply, is that what you are contending?

Mr. HOPKINS. No, sir; not precisely, sir, perhaps in both directions; but, if Your Honor will indulge me——

The COURT. Proceed.

Mr. HOPKINS. Now, this Krug-Lewis agreement, sir, that carried forward this section, executed the 29th of May, was in accordance with the Presidential Executive Order submitted to the Wage Stabilization Board under the section 5 for its approval.

Now, who submitted that contract, in accordance with Executive Order, to the Wage Stabilization Board under Section 5? The Government itself, through the Secretary of the Interior, submitted it.

He submitted it without re[illegible]gation. He submitted it with
63 his full approval and asked for its endorsement under section 5.

The Wage Stabilization Board approved the Krug-Lewis Agreement. The President of the United States endorsed his approval thereon, sir, and that Krug-Lewis Agreement carried forward and preserved the terms of the National Bituminous Coal Wage Agreement that contains Section 15 that says, in substance, that either party may give a ten days' notice asking for negotiations. Thereafter, it is the duty of the other party to meet the requesting party to negotiate. They shall negotiate for a period of fifteen days and thereafter, according to the

wording of the contract, itself, either party may give to the other a notice in writing of the termination of this agreement to be effective five days after the receipt of such notice.

Now, what occurred, sir?

On October 21, of this year, as the result of misinterpretation and difficulty and disputes growing out of the working conditions and the hours of labor and other problems involved in the labor dispute, the United Mine Workers of America exercising its right to reopen this contract to the extent of asking negotiations, and bearing in mind, sir, that it was exercising a right in a contract that had received the stamp of approval of the Wage Stabilization Board under Section 5, filed its notice of October 21, addressed to the Secretary of the
64 Interior, in which he respectfully requested as follows:

"The Krug-Lewis Agreement having thus been breached and significant changes in Government wage policies having occurred, you are accordingly hereby officially notified, the United Mine Workers of America request a joint conference of their accredited representatives, and representatives of the joint contracting parties to the Krug-Lewis Agreement of May 29, 1946, for the purpose of negotiating new arrangements affecting wages, hours, rules, practices and differentials and other pertinent matters, and it is respectfully suggested that the conference convene on November 1, 1946, in Washington."

What happened thereafter, sir? The Secretary of Interior, being out of the city, sent various and sundry telegrams, then, on or about October 27 or 28, as part of the pleadings in the Government case, sir; and one of the exhibits in the action in chief, designated Captain Collisson, the then Coal Mines Administrator, or about to become so, upon the resignation of Admiral Moreell, met the mine workers' representatives, on November 1, without the presence of Secretary Krug.

Those conferences continued, sir, from day to day until November 11, a period of ten days almost, before the Secretary of the Interior came into the conference, sir; and as a matter of record not to be
65 disputed, I think from November 11 until November 15, the Secretary of the Interior devoted, by the clock, a total of three hours and thirty-odd minutes to the conference both privately and in joint group with the mine workers who had respectfully requested it.

For a period, sir, of fifteen days from November 1, to November 15, the mine workers were knocking at the door of Government, under a request and notice respectfully directed to them, to negotiate this agreement. Government, through the Secretary of the Interior, refusing. On the morning——

The Court. I don't think you should make a statement of that kind, sir. The question there was this: The United Mine Workers claimed that this Section 15 continued as part of the Krug-Lewis Agreement.

Mr. Hopkins. Yes, sir.

The Court. Now, the Government contended that it did not continue during the period when the Government had the mines, but that the United Mine Workers were relegated to Section 5 of the Smith-Connally Act.

Now, that was the controversy. There isn't any question about that, and all this restraining order did was to hold the matter in abeyance until you could get a judicial decision.

Now, I don't say that you didn't want a judicial decision, I don't know what your idea was in precipitating this walk-out, but I do know if the restraining order had been obeyed, and we had met here, formally, and discussed this matter, it could have been worked out in a legal way, which should have been satisfactory to all parties, and this avoided this very distressing situation.

Mr. HOUSTON. In that regard, Your Honor, speaking for the mine workers, we had no overture from the Government or suggestion from the Government, and I respectfully submit that we had no suggestion from the court. We would have been pleased, had it been Your Honor's desire, to have met Your Honor at any time for discussion upon this problem, sir.

The COURT. How can you say that, in view of the fact that you disregarded this restraining order?

Mr. HOUSTON. I missed the point of Your Honor's question, perhaps. I thought you meant at a time immediately subsequent to the issuance of the restraining order. As a matter of fact, with all due deference, not intending to get into any controversy as to what right we might or might not have asserted under the two-day rule, if that is the point Your Honor refers to, I merely want to say to you, again, sir, in response to your question on Section 5, if you will, that the defendants believed and they so aver and allege, now, that Section 5, in its operating effect, when the Krug-Lewis agreement in accordance with the executive order was presented to the board, and it approved it on May 31, it approved the right, per se, of the mine workers to exercise their right to reopen.

The COURT. I know, but that is what the restraining order was for—to give you an opportunity to show that that was true, or to give the Government the opportunity to show that their argument was true; and you have disregarded the restraining order.

Mr. HOUSTON. These points I make run more directly, of course, sir, to the answer of the Government complaint for a declaratory judgment.

The COURT. Of course.

Mr. HOUSTON. I raise them now, because I understood the Court raised the question.

The COURT. Hadn't you better let Mr. Padway complete his argument on the Norris-LaGuardia Act?

Mr. SHAWELL. I am most reluctant to interrupt counsel, but I think it only fair to the Government to state that many of the observations which counsel has made as to the facts are quite premature, and I believe, quite inaccurate at this time. The Government has stated and now states it will produce its witnesses in open court subject to cross-examination.

The COURT. Now, Mr. Padway, you may proceed.

Mr. PADWAY. What I have thus far said or attempted to present to the Court was merely this, that the Norris-LaGuardia Act applies to the Government, as well as anyone else, no exceptions.

That jurisdiction has been denied to the United States District Courts with respect to the right to issue injunctions in labor disputes.

Now, I don't know whether I have sufficiently referred to the correspondence between Mr. Lewis and Mr. Krug, which established the labor dispute.

Assuming that these mines were in the possession of private parties. In other words, the facts would be the same whether it be the Government or whether it be a private party or who else ever it may be, if there is a right to demand higher wages, shorter hours, better working conditions upon whoever had charge or control or who considers himself the boss, then we have made those demands and if those demands constitute a labor dispute then we have here a labor dispute, and if they do not constitute a labor dispute, then we have not established a labor dispute. But I don't think even the Government will contend that.

As I take it, the Government makes a different contention here. It says that it is not governed by the Norris-LaGuardia Act, but
69 that the Norris-LaGuardia Act applies only to private individuals, private employers, union workers in their disputes, and I contend, and I point to a statement by LaGuardia himself, and by Mischner, which they believe would seem to indicate that that is so.

Well, LaGuardia's statement ought to be read in its entire contents. You will find that what he had in mind is entirely different from what the Government contends, namely, he had in mind governmental functions such as the running of a post office, government police, if there were any, the Government fire department if there were any. In other words, the functions that are necessarily nonproprietary but are actually governmental functions.

Mischner had the same thing in mind. When we come to examine the history of the Act, not what certain persons may have expressed themselves with respect to it, although the court may give some weight to those who managed and had charge of the bill, but as Mr. Kaiser in his short résumé said, that actually two attempts were made as we have set forth in our brief on the part of the legislators, Members of Congress, to state that very proposition, namely, that the Government shall not be included in the Norris-LaGuardia Act, and both of them were rejected by large votes—2 to 1, in one instance, and 3 to 1 in another, and that was rejected.

That is more significant than the interpretation or offhand
70 statement that the Government is not involved in this by some legislator. But the Government takes the position, as I take it, that the rule of law is that where Government itself is involved, a statute passed with respect to the general public does not involve the Government.

Now, there are cases to that effect; but there are cases that would hold and explain that it is not necessarily so.

That may be taken as an offhand proposition that in the appropriate cases where a statute is passed, the Government is not bound by that statute, or it may not apply to it unless it specifically says so.

What I think is significant with respect to labor disputes, Congress was dealing with the court's jurisdiction—with a limited part of the system of jurisprudence under which the Federal Courts operate.

It was dealing only with the specific proposition of the labor dispute and the injunction that may accompany it if grounds are presented in the nature of a petition or a complaint. That is all it was dealing with, and it said "It shall not have jurisdiction unless" such and such exists.

Now, in the Obergfell vs. Green case, which I tried before Your Honor, Your Honor was then of the opinion, as I recall, that there was not a labor dispute. I contended very vigorously——

The COURT. That was not the issue in that case, Mr.
71 Padway.

The question of a labor dispute—it was just the question of jurisdiction in that case.

Mr. PADWAY. Maybe Your Honor recalls it better than I do; but I do want to say this, I think both were involved. I think the decision went on both grounds. It is true; you are correct when your say that jurisdiction existed.

I raised the question of labor disputes. I think Your Honor's ruling first was that it was not a labor dispute and Your Honor had some cases to support you. You remember it was a case involving two unions——

The COURT. I recall about it, sir.

Mr. PADWAY. And I have the decision before me, if Your Honor would care to see it.

The COURT. It is not necessary to read it to me, Mr. Padway. I know all about it.

If you think anybody else is interested, you can read it to them. (Laughter in the courtroom.)

Mr. PADWAY. No; I am only interested in what Your Honor thinks this morning.

I say this, that the issue there was twofold: one, have we a labor dispute; and two, did the Court have jurisdiction.

I think you have to have that issue in every question
72 of the Norris-LaGuardia Act, "Have we a labor dispute?"

The COURT. I guess you are right about that.

Mr. PADWAY. And if there is no labor dispute, then the question is out.

Now here is what counsel is attempting to say, that there is no labor dispute.

They base that on cases. They claim that the Government is excluded from the Act.

We have cited in our brief these cases:

"Since, in common usage, the term 'person' does not include the sovereign, statutes employing the phrase are ordinarily construed to exclude it. But there is no hard and fast rule of exclusion. The purpose, the subject matter, the context, the legislative history, and the executive interpretation of the statute are aids to construction which may indicate an intent, by the use of the terms, to bring state or nation within the scope of the law."

That occurs in U. S. v. Cooper Corporation, 312 U. S. 600; also quoted again in U. S. v. California, 297 U. S. 175.

Now, again the Court went on to say:

"Decision is not to be reached by a strict construction of the words of the Act, nor by the application of artificial canons or construction; on the contrary, we are to read the statutory language in its
73 ordinary and natural sense, and if doubts remain, resolve them in the light not only of the policy intended to be served by the enactment, but as well by all other available aids to construction. But it is not our function to engraft on a statute additions which we think the legislature logically might or should have made."

That I urge in favor of this, when we make a comparison with the National Labor Relations Act, that deals with the same definitions of

the labor dispute and brings the labor dispute and all attendant questions relating to it within that Act, because of the definition there, the Congress did this. Speaking there of injunctive decrees the Government must ask to restrain persons and to compel compliance with cease and desist orders issued by the Board, Congress said: "When granting a permanent or temporary relief or a restraining order or making or entering any decree enforcing or modifying, or setting aside in whole or in part, an order of the Board, as provided in this section, the jurisdiction of a court sitting in equity shall not be limited by the Act entitled 'An Act to amend the judicial code and to define and limit the jurisdiction of courts sitting in equity.'"

And they give the citations of the Norris-LaGuardia Act.

74 And that has been found in many Acts where they felt that. Unless that were considered there might be a different construction placed upon it.

Counsel says you don't need to put those in there. It is a matter of course.

Well, here is another decision. The decision of United States v. California:

"Respondents invokes the canon of construction that a sovereign is presumptively not intended to be bound by its own statutes unless named in it"—

And it refers to the British Doctrine.

Of course, the British case is entirely different. You have there a monarchy, and the King has certain powers to distinguish from Parliament, and he is supreme, and there is involved the power of the monarchial form of government in that country.

"The presumption is an aid to consistent construction of statutes of the enacting sovereign when their purpose is in doubt, but it does not require that the aim of a statute fairly to be inferred be disregarded because not explicitly stated." See Baltimore National Bank v. State Tax Commission, and other cases stated.

"We can perceive no reason for extending it so as to exempt a

75 business carried on by a State from the otherwise applicable provisions of an Act of Congress, all-embracing in scope and national in its purpose, which is as capable of being obstructed by State as by individual actions. Language and objectives so plain are not to be thwarted by resort to a rule of construction whose purpose is to resolve doubts and whose application in the circumstances would be highly artificial."

Now, my purpose in the reviews that I made this morning quite extensively as to what related to the Norris-LaGuardia Act was for the purpose of not only to affirmatively grant labor certain rights which shall not be interfered with but to limit the power of the Court. There is no question but if these decisions are accepted the Court must hold that the sovereign in this instance is bound by the same rules under the Norris-LaGuardia Act, particularly when it is in private business, as it is here, regardless of the fact of how it acquired that business.

Now, furthermore, in the passage of the Norris-LaGuardia Act and in the Committee Reports you will find a significant reference why the Norris-LaGuardia Act is being passed; why Congress is asked to pass it.

And it said this:

"This section is included principally because"—

This is Section 5 of the Act—

76 "because many of the objectionable injunctions have been issued under the provision of the antitrust laws, making it a necessary prerequisite for invoking the jurisdiction of which is a finding of the existence of a conspiracy and without which no injunction could be issued."

In other words, the Government was very active under the antitrust laws, both to include labor, as Your Honor will recall one of the very earliest cases so well known, the Lawler vs. Lawler, and the Danbury Hatters case, and other similar cases, labor was confronted with those junctions, and the Debs case, all based upon so-called governmental functions, and the Government seeking to prevent the evil of monopoly and trust, which was then being considered and legislated upon, and yet it said here, "We are passing this Act because most of the injunctions are the worst sort of injunctions, were those that the Government sought."

Now, if the Court please, in addition to that we have actual recent authority for the Government being confronted with the Norris-LaGuardia Act, and counsel, in a rather adroit manner, seeks to pass it off in about ten or twelve lines, knowing full well that the Government had been bound by the Norris-LaGuardia Act time and again; had just this to say, and does it in a sort of a euphemistic

77 fashion.

"It is true that some Courts have held that the United States may not, because of the limitations of the Norris-LaGuardia Act, obtain injunctions to restrain labor union action in cases involving or growing out of bona fide labor disputes affecting private employers and their employees."

I challenge counsel to find anywhere where the Norris-LaGuardia Act or any decision by the United States Supreme Court, where there has been any distinguishing feature made between the injunction sought by the Government involving private employers or those involving the Government itself. There is no such distinction.

When the Government seeks an injunction it is the Government that seeks it, and there is no distinction to be made whether private employers will be benefited by or will not be benefited by it. The Government is the party, the Government seeks it, the Government invokes the statute and the law, and if the Government in those cases, if the Court please, is governed by this LaGuardia Act, so it is in this case.

Now, counsel goes on to say:

"In United States v. American Federation of Musicians"—

They knew we would cite these cases to Your Honor on this

78 point, so they have taken the bit and given them first—"and U. S. vs. Weirton Steel Company, Columbia River v. Hinton"—the controversy stated in the complaint here, however, is plainly beyond the scope of those decisions.

They do not distinguish why; plainly beyond the scope, but the legislative history of the Norris-LaGuardia Act itself shows why it is beyond the scope.

Now, let me see. Why is it beyond the scope?

The Court held the Government to be bound by the Norris-LaGuardia Act.

The COURT. Not in a case of this kind. You take that Musicians' case. It simply decided that a musicians' union was not subject to the antitrust laws, and that is all it did.

Mr. PADWAY. I beg your pardon, sir?

The COURT. Well, I read the case just yesterday.

Mr. PADWAY. I think that Your Honor has read that quite a while ago.

The principle of the whole case was based upon whether we have a labor dispute under the Norris-LaGuardia Act and then whether the Norris-LaGuardia Act applied.

Now, Mr. Thurman Arnold—since Your Honor mentioned that, I would like to take a few moments on it, because I am going to argue it anyway.

79 The COURT. That is all right. Proceed.

Mr. PADWAY. That is one of my strong points.

In this case we have this situation: The American Federation of Musicians issued a notice, its President did, similar to that issued by President Lewis, that from and after a certain time it will not work, and that is what our notice amounts to:

Unless satisfactory working conditions and grievances are adjusted.

All right; the Government, through Mr. Thurman Arnold,
80 sought to protect the public interest. It is only a matter of degree when you speak of coal or speak of music, because the intent there was alleged to be—and I am familiar with the pleadings because I tried that case in the court below and presented it to the Supreme Court of the United States—there Mr. Arnold alleged, among other things, such as the interference of music, and that the public wouldn't get music, argued it was an interference with the communications system of the United States. That in a degree may be comparable with the interference of a commodity like coal. There, too, the welfare was involved, and that, too, was during wartime, and Mr. Arnold, before Justice Barnes in the Federal Court in Chicago, argued most vigorously that these small stations would not be able to disseminate information and war news and rules and regulations that people may be asked to comply with during the war. He made all that argument in the Government's interest and the public interest.

Justice Barnes went into that: I have his opinion here:

"* * * the dispute involved in this case is a labor dispute within the meaning of the Norris-LaGuardia Act. That Act further provides:

"'No Court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any
81 case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:'."

And he goes on to state those provisions I have read, and I won't repeat them.

"In view of the foregoing provisions, jurisdiction does not exist to grant any of the injunctive relief here sought.

"The Court is further of the opinion that the acts complained of are of the kind specified in the second paragraph of Section 20 of the Clayton Act from"—

And then he calls attention to that Act.

"Accordingly, the acts complained of may not be considered or held to be violations of any law of the United States."

And the third contention had to do with the closed shop. And now he pointed out:

"The Court has been guided to the conclusions herein expressed by the decisions of the Supreme Court of the United States in United States v. Hutcheson and United States v. International Hod Carriers and United States v. Carrozzo."

82 And the whole presentation was not whether there had been a violation of the antitrust laws—that is, the decision wasn't that; the Court disregarded that entirely; that was Mr. Thurman Arnold's thesis, but the Court decided it on our basis, and the argument we are making herein that the Government was bound by the Norris-LaGuardia Act, presenting nothing more nor less than a labor dispute, and it being a labor dispute the Court had no jurisdiction. So Justice Barnes held.

Government was not satisfied. It appealed to the Supreme Court of the United States. We did the unusual thing, not too unusual but rare; we said on the face of the Government's pleadings setting forth various activities and the interest in the dispute, and so forth, that the Court ought to affirm. We made a motion to affirm the judgment in the Supreme Court without the necessity of granting a writ of certiorari or without the necessity of arguing the case, and little did I think the Court would grant such motion, but the Court did. It didn't deny certiorari. It affirmed the judgment and only in four lines, and cited two cases, and what cases does Your Honor think were assigned?

New Negro Alliance, of the Norris-LaGuardia Act, what constitutes, and the Milk Wagon Drivers' Union, also involving a
83 labor dispute, and the interesting thing about the last case was that the injunction invoked the Sherman Act as an issue, and the Court said regardless of a violation of the Sherman Act if you show a labor dispute herein the Norris-LaGuardia Act applied. Let me read these four lines to you:

"United States of America, Appellant, v American Federation of Musicians, James G. Petrillo. The judgment is affirmed. Act of March 23, 1932, (47 Stat. 70 Chap. 90) Norris-LaGuardia Act."

So that was the precise issue that I presented. I heard little about the Sherman Anti-Trust Act. Here is a labor dispute and Thurman Arnold argued the Government's interest, "You cannot urge that against the Government you are going to stop the whole communications system," and Justice Barnes thought otherwise and the Supreme Court thought otherwise. And the other cases cited were New Negro Alliance and The Milk Wagon Drivers' Union.

The New Negro Alliance case is a very interesting case.

Here in the City of Washington a negro organization, not a labor organization, a so-called welfare organization, picketed the Safeway Stores, because, as they alleged, the Safeway would not employ negroes—a sort of detached interest on the part of an organization that wasn't a labor organization—and there Justice Roberts elaborated

upon the definition of labor disputes in the Norris-LaGuardia
84 Act; and here in this case the Petrillo case, where Thurman Arnold on behalf of the Government urged the proposition urged here this morning, the United States Supreme Court affirmed Justice Barnes and said that is a labor dispute, and you, the Government, are bound by it and an injunctive decree cannot issue. And what more do we want than that? That is definite.

Counsel cite—I don't think I will go into that, that is the Carter case and the Shipp case; I don't think they are involved here for the moment on this particular point—but that is law that has recently been enacted, and that is the law of the United States Supreme Court.

I say here this Court may hold there is no labor dispute and surely we will defer to the Court's judgment on that, and this Court may hold that the Norris-LaGuardia Act may not apply, but it applies in this case as in the Obergfell v. Greca and the same as in the American Federation of Musicians and Petrillo, it applies in all the cases where the Act applies.

Take In Re Debs; I think that was decided in 1896; that was one of the foundations for the Norris-LaGuardia Act. The Committee Report elaborated on it. It was an injunction sought by the Government, and for what purpose? That was a governmental function. The decree was based on a complaint of allegations that Debs and
85 the members of the Railway Labor Union, at that time, in that Pullman strike, were preventing the mails from moving, and yet that was taken up by the Committee where the Norris-LaGuardia Act was discussed, and that was one of the bases for so wording it.

The intention, the thought, the manifestation of evidence certainly back of the Norris-LaGuaria Act was to take that power away from the Courts.

It is one thing to say that the Court may issue an injunction and we must obey it, even though it may be erroneously issued, and I concede that that is the law, but not when there is no jurisdiction at all, any more than we would be obliged to obey an injunction if some Municipal Judge here undertook to issue one.

Suppose a Municipal Court undertook to try this case or to refuse to issue the decree, and that Court without jurisdiction—by any stretch of the imagination could it be contended that Court would have power to punish us? If that Court has no jurisdiction ab initio then the order itself has no foundation whatever.

Counsel, however, does cite two cases, the Shipp case and the Carter case. The Shipp case did not involve the Norris-LaGuardia Act and it would be useless to consume time in arguing its effect because it didn't involve the powers and jurisdiction of the Court as limited or entirely deprived the District Court of jurisdiction. In other
86 words, a criminal case of a different statute.

But there is in the Carter case some statement to the effect that even though the Court did not have jurisdiction since the Court had the right in the first instance to determine whether it had jurisdiction or not, it should have been obeyed.

I would say, relying strictly upon the language of that decision, the Court could say, "I am the judge of my jurisdiction; I have decided that I do have jurisdiction; therefore, I have issued this order, and if you violate it you are subject to punishment."

But here we are today in this situation: we are arguing now whether the Court did have jurisdiction. And if the Court agrees that it did not have jurisdiction, and the Norris-LaGuardia Act applies in this case to the Government as well as to us, then the argument follows that the Government makes is this: yes, the Court did not have jurisdiction to issue the decree but the Court determined it had jurisdiction and the decree was issued; and we are still presenting that phase of the case and that issue to the Court.

The Court has come to the conclusion it doesn't have jurisdiction, but nevertheless since you violated the order you should be punished, and should be sent to jail, and so forth.

87 I say that can't be gathered even from the Carter case and if it could that is unsound law, and that is the only authority for that. That would be erroneous. Besides what our Court said in the Obergfell case, although it did not involve contempt but involved jurisdiction, could there be any question that this Circuit would hold differently? It never went to the Supreme Court.

By the way, counsel just reminds me that Judge Hutcheson wrote a strong dissent. In the Obergfell case, if Your Honor will remember, here is what our Circuit Court said:

"No lack of jurisdiction of the person may be supplied in that manner, as for example by a pleading requesting release similar to that requested by the other party, waiver or consent cannot confer upon a Court jurisdiction over the subject matter of the suit. In the instant case, as there was a labor dispute, within the meaning of the Norris-LaGuardia Act, the requirements of the Act concerning jurisdiction must be satisfied; absent which, the Court had no jurisdiction to grant relief."

I am sure that no other Court—I don't know how the Fifth Circuit came to that conclusion—but no Court will say where a Court has not jurisdiction in the first place but erroneously concludes that

88 it has and issues a decree, which to all intents and purposes is null and void, nevertheless you violated my decree, and the Court says, "Come forth here and be punished for it." Is that elementary justice? Would that make for a sound system of jurisprudence to say that?

The COURT. I don't think any other rule would accord with a sound system of jurisprudence. Of course, Mr. Padway, in a clear case of judicial use, or usurpation, if the Judge undertook to jail an individual for a violation of an order which involved a clear case of usurpation, any other respectable Court would release the individual under a writ of habeas corpus. There is no question about that. But unless it is a clear case of usurpation, unquestionably and beyond any doubt whatever the Court is the judge of its own jurisdiction and not the individual upon whom or upon which it issued its injunctive process. There is no possible doubt about that in this Court's mind.

Mr. PADWAY: I don't disagree with Your Honor in the statement of law you have just enunciated. What I disagree with is this: that although the Court in the first instance is the judge of its jurisdiction, that if it had no jurisdiction at all and issued a decree that decree would not be enforceable in contempt proceedings or be but otherwise that a citation for contempt would not empower the Court to inflict penalties for its violation.

89 The COURT. In the Court's opinion, and the Court doesn't rule that it did, if the defendants in this case disregarded entirely that restraining order then they are guilty of contempt of Court, whether the Norris-LaGuardia Act applies or does not apply. That, in this Court's opinion, is the law.

Mr. PADWAY. Please don't consider me disrespectful or facetious because I wouldn't do that in this or in any other Court, but I will ask Your Honor to reserve that judgment and read our brief and the cases cited. You may decide otherwise.

The COURT. I know what you mean, but I don't want any doubt in anybody's mind about the fact an individual cannot simply take the law into his own hands and decide for the Judge what the law is, in advance, and disregard a restraining order. If that can be done then we have simply got anarchy, that is all.

Mr. PADWAY. May it please the Court, then I am saying this—again not facetiously—that the United States Supreme Court has preached anarchy in the Thomas v. Texas case.

The COURT. The Court doesn't agree with you at all, sir.

Mr. PADWAY. Give me the benefit and indulge me to say that
90 in the Thomas v. State of Texas case an injunction was issued stating that if Thomas came to Texas and held union meetings for organization purposes, in violation of the statute of Texas, Mr. Thomas would be jailed.

The COURT. That is a clear case of judicial usurpation, Mr. Padway.

Mr. PADWAY. Why?

The COURT. Of course, I agree with you that if I were to pass an order which said:

You must stand out here in the street from ten o'clock until twelve tonight in the rain, and you didn't do it I agree with you that that would be an act of judicial usurpation and you could not be punished, and a writ of habeas corpus would take you out of jail. But what I am saying is that in this case there was a matter which justified judicial determination. There is nothing in this situation to indicate judicial usurpation, and, therefore, if the defendants disobeyed the Court's order the defendants are guilty of contempt of Court.

Now, of course, I am saying that in order to give you all the opportunity you want, when the time comes, to argue to the contrary.

Mr. PADWAY. Well, I am arguing to the contrary now, and I would have to argue this, that if that is so then not only should Mr. Lewis be punished, but his lawyers, including myself, should be, be-
91 cause we certainly have given him a different interpretation of the law, and I may have acted erroneously.

The COURT. You know Harry Sinclair once said to Judge Hitz that "All I can say is I did what my lawyers said," and Judge Hitz said, "The cemeteries are full of people who took the doctor's advice."

Mr. PADWAY. That is very definite, but I think I may say quite definitely that Mr. Lewis will not go to the cemetery because of this litigation, not until at least his Maker calls him there. I am satisfied of that.

The COURT. I am not suggesting that, but I am suggesting that the fact he proceeds on the advice of an attorney is not sufficient entirely to justify his conduct if he did wrong, and that has not been decided yet.

Mr. PADWAY. No, I am not citing that as an excuse for what Mr. Lewis did, has done, or will do, but I cite that merely as a construction of the law which we indulged in and which we gave to Mr. Lewis; advice which we still feel is good advice, and we still feel that the cases we have cited, and I know if Your Honor will examine, will probably bear us out. If they don't then I am simply in error on the judgment I present—this Court's judgment, rather—on the analysis of cases, but that, of course, decides nothing, because Courts and counsel have differed on analyses before.

92 Let us take the straight issue, as presented by the Government, namely, a sovereign function. Is the Government now engaged in a sovereign function, assuming that the law is the law?

I contend the Government is not engaged in a sovereign function at all, no matter how important the controversy may be or how important the cessation of this work may be.

In the first place, the importance of the cessation of work and its reaction upon the body politic, and the results from it, are no different than if it were in private hands than in the Government hands. In other words, the results are the same, and not for a moment will the Government contend that the Norris-LaGuardia Act wouldn't apply if it were in private hands. So we should not be confused or misled by the desperation, to use a harsh term, that we find ourselves in because of the cessation of employment.

What we are interested in, however, is this fact: Is it a Government function? If it isn't a Government function the results would be the same, the Norris-LaGuardia Act would apply, and the Court would be governed by that.

Now, the Government says this is a Government function, and the Norris-LaGuardia Act does not apply, and, therefore, this

93 Court had the right to issue the decree. Well, there is a good deal of factual matter——

The COURT (interposing). I think the Court will take a recess until one forty-five.

(Thereupon, a recess was taken *until* at lunch until 1:45 o'clock p. m.)

94 AFTER RECESS

(Thereupon, at 1:45 o'clock, p. m., the proceedings were resumed at the expiration of the recess.)

The COURT. Proceed, Mr. Padway.

Mr. PADWAY. May it please the Court, during the noon hour I had occasion to read that portion of the record which was made here in court on Monday and I noticed there that the Court said, in discussing this problem of contempt, that you were applying Section 385 of the U. S. Code dealing with the Judicial Code and judiciary.

Do you have Title 28, Your Honor?

The COURT. I have it here.

Mr. PADWAY. Now, it may be 387, I am told.

The COURT. I don't remember, sir, making any specific statement about which section would ultimately apply. 387 was followed because that appeared to give the defendant an opportunity to purge himself of the alleged contempt if he admitted it. It may very readily turn out, Mr. Padway, that Section 389 is the one which applies.

Of course, if the Norris-LaGuardia Act is applicable, none of them apply.

Mr. PADWAY. No, no. That is correct.

Now, I think that the argument I indulged in this morning respecting the right of this Court to punish for contempt where the
95 Court determined it had jurisdiction even though the order was, let us say, illegally issued, it has been resolved by the U. S. Code.

The COURT. Mr. Padway, I suspect that if the Norris-LaGuardia Act applies, it might be a contempt, but I would not imagine that the punishment would very seriously interfere with any body's comfort.

Mr. PADWAY. In view of that, I am very greatly relieved and I am going to lay down this statute and proceed to another point.

That is the only consistent view that should be taken with the writ if the Norris-LaGuardia Act applies.

Now, I would like to take a little time—Your Honor has been good enough to indulge us in time because of the importance of the question—in an analysis of the record as it is disclosed in the pleadings of the Government, which, in our view of the case, demonstrates that this is not a sovereign function as is embraced within some of the references of the brief of the Government; and it is exceedingly important, and therefore I would like to state our position in some detail.

Exhibit A of the complaint is Executive Order No. 9728 and provides in part as follows:

"The Secretary of the Interior shall act through or with the aid of such private instrumentalities or persons as he may designate.
96 The Secretary of the Interior shall permit the managements of the mines taken under the provisions of this order to continue with their managerial functions to the maximum degree possible consistent with the aims of this order.

"Thus, we have (a) the Government allegedly performing a sovereign function through private persons and instrumentalities"—and that is not generally the case.

I don't say that is determinative, but I will lead up to see where we get to:

This utilization of private instrumentalities in what is alleged to be a sovereign function.

"(b) The Government, allegedly acting in its 'sovereign capacity,' turning over the entire 'managerial functions' to private persons."

Now, Exhibit B of the complaint, the so-called Krug-Lewis Agreement, by its terms establishes a contract covering in detail the wages, hours, and working conditions of the employees who work in the bituminous coal mines, a contract which is wholly inconceivable as applicable to "sovereign" employers.

Even more, the Krug-Lewis Agreement, incorporating, as it does, agreements previously made with the private owners of the coal mines, affirmatively maintains a union-shop condition in the bitumi-
97 nous coal mines, something completely unheard of as respects ordinary Government employees.

And that is certainly true with respect to Government and Civil Service employees where, as we know, what is commonly termed a closed shop is not permissible under law.

In addition, the Krug-Lewis Agreement, like Executive Order No. 9728, shows on its face that the Government's participation was neces-

sarily temporary, whereas sovereign functions survive as long as the sovereign power itself does.

Three, Exhibit F of the complaint, Captain Collisson's letter to Lewis of October 22nd, 1946, states in part as follows:

"Such an agreement would accomplish the result which has been publicly expressed as the desire of the Coal Mines Administration, the United Mine Workers, and the operators, namely the return of the mines to private operation."

And that last, namely, the return of the mines to private operation, is significant as divorcing this from a sovereign function of the Government with respect to the right to issue this injunction.

Similarly, Exhibit J of the complaint, letter from the Secretary of Interior Krug to Lewis of November 14, 1946, states in part as follows:

"I am obliged to inform you that certain of your proposals are
98 of such a fundamental nature that they should be directed to the owners and private operators of the bituminous coal mines rather than to the Government, which is only the interim custodian of these properties."

The Court. What is the date of that letter, sir?

Mr. Padway. The date of that letter, if Your Honor please, is November 14, 1946.

Now, that letter proceeds further—I will say to the Court that the letter in its entirety is not set forth here, but I believe can be produced. I will read those portions which are applicable to the argument I am making.

"I am convinced that any substantial change in wage rates and hours of employment made by the Government at this time would postpone for an indefinite period the return of the mines to their owners, and would thwart the expressed and sincere wishes of all persons concerned for genuine collective bargaining between management and labor in the bituminous coal industry.

"It would contradict this policy, and be inimical to the best interest of the coal miners, and of the country, should the Government prolong indefinitely its temporary role as a substitute for one of the parties in the collective bargaining which must be the foundation of a healthy coal industry."

99 Now, that letter, merits some discussion.

I think that letter tells the story more eloquently than anyone can state with respect to the sovereign functions.

Government does not in the exercise of sovereign functions tell a party to a particular agreement or to the enterprise itself, "Go and bargain collectively with other persons." The Government should be fair with us in this respect, that if the Government is unwilling to sit down and bargain with the other party to the controversy, namely, the United Mine Workers, and the Government assigns as a reason, "Go and bargain with the operators, with the owners of those mines," it should not come here and say "Don't apply the Norris LaGuardia Act; don't give these workers the protection that they otherwise would have if the mines were owned and controlled privately."

The Court. Is it your argument that the Government refused to negotiate with the union in accordance with Section 5 of the Smith-Connally Act?

Mr. PADWAY. We do say that, and we say to the Government did not only that; the Government was shooing us away.

Here was Mr. Lewis asking for dates——

The COURT. I may be mistaken, but I had not gotten that impression from the pleading.

Mr. PADWAY. Well, Your Honor will get it from the record, I am pretty sure.

100 Here is Mr. Lewis asking the Government to take up these matters with him, and he is asking for dates and appointments, as was related here this morning by Mr. Hopkins, and here the Government says, "Why, we are only half-hearted temporary custodians. You go and bargain with them."

Now, if it was the position that we go and bargain with them, and by them I mean the private owners of these mines, then it should not ask that we be deprived of the protection that we would have with said private owners. If we were bargaining with private owners, if we were bargaining with them, we would have the protection of the Norris-LaGuardia Act undoubtedly. I think almost concededly.

But here the Government is saying this: "We don't want to take up these questions with you. Take them up with the owners of the mines"; and then when Mr. Lewis insists that the Government live up to its contract——

Mr. SONNETT. If the Court please, I have listened to counsel make statements of alleged fact for some fifteen minutes, which are not true. Our witnesses will be produced in open court subject to cross-examination.

101 In the meantime, it seems to me that counsel's argument to the extent that it is relevant at all, is relevant to the mitigation of punishment, perhaps, but not to the fact of contempt. We will produce our witnesses. Let counsel prove his facts at the right time, and in orderly manner as this Court normally does in every case.

The COURT. Well, of course, Mr. Padway's argument is not at this time directed directly to the issue of the Norris-LaGuardia Act or to anything else that I remember that is set forth in this motion.

Unless you get too far afield, though, I am not disposed to interfere with your argument, sir.

Mr. PADWAY. Now, if the Court please, I am assuming——

The COURT. I mean too far afield with the issue that is before us now.

Mr. PADWAY. No. But I am assuming that the Norris-LaGuardia Act does apply, and I am also assuming that what appears in the complaint as exhibits are truthful exhibits. I am commenting on those exhibits. I am commenting upon an argument that dwells upon sovereign functions, and I am addressing this Court in this manner by stating that we have not here a sovereign function on the basis of the correspondence between the Department of the Interior and its officials and Mr. Lewis.

102 Now, if that is not pertinent, I don't know what is. If the exhibits attached to this complaint and before this Court now are not the subject of comment, I don't know what is.

I am trying to demonstrate here that the assumption on which the Government proceeds is incorrect.

The Government proceeds that it is a sovereign function. Assuming that the Government contends, further, that we should be punished

for contempt, we are here on a contempt proceeding. We say that we are not subject to contempt because there was not a Governmental function—not a Governmental function, but a sovereign function—and that being so, then it follows, as we say, that the Norris-LaGuardia Act applies, and if it applies, this Court, then, should apply that Act and grant us the protection we ask.

I don't know of a more pertinent and logical and more applicable argument that can be made. These are the Government's exhibits. Were they written or were they not? Did Mr. Collisson say that the Government is a temporary substitute? Did he say he wanted to turn them back? Did he say, "Go and bargain with the private owners"?

I can see why the Government is slightly disturbed, because the Government is in a dilemma, and whichever horn of the dilemma it takes, it is just a little bit, to use a colloquial phrase, out of luck.

103 In other words, it says, "Go and bargain with these other persons if you want wages, hours, and working conditions, because it is their minds, and you must take the matters up with them," and then he says, "Oh, lo and behold, we have control of these. Don't you dare do the things that you could do if you bargained with them."

I will ask one question and then answer it myself, if the Court please. I pose this question and make the answer, and that is this:

"What would happen if Mr. Lewis went and bargained with these employers and, as we suspect, they would not agree, or would refuse his terms and conditions? Then what would the Government say?"

"Well, you bargain with them, and the only alternative left to a union when bargaining cannot be agreed upon, is to exercise the right not to work if the terms and conditions are not satisfactory, and the Government arises then and says, 'Yes, you have done what we have asked you to do; you have bargained with these employers, they have rejected your terms and conditions, but stand there; you cannot budge and do anything.'"

The Court. I will hear you, Mr. Padway, but I have closely examined these proceedings very carefully and thought a good deal about those, and there is nothing about the proceedings that indicates to me that the Government avoided any conference or negotiation

104 with the United Mine Workers under Section 5 of the Smith-Connally Act.

Mr. Padway. Well, if the Court please, we are in this position——

The Court. They may have done this as far as the proceedings show up to this time; they may have done this: They may have said, "Now, look, if you insist that this Section 15 of the original Bituminous Coal Agreement applies, why it may be that you can make some arrangement with the owners of the mines which will avoid any serious difficulty."

"You can try that if you want to. If you can make an arrangement with them, the Government has absolutely no objection."

But I have never noticed anything or seen anything that would indicate to my mind that the Government side-stepped negotiations under Section 5 of the Smith-Connally Act.

Mr. Sonnett. Nor is it true, Your Honor, that the Government did. We will offer proof to the contrary.

I cannot believe that counsel is intentionally misleading the Court.

The Court. He has not misled the Court because the Court has its own view about what the proceedings show.

Mr. SONNETT. I have no objection, if the Court please, to counsel reading any or all of the documents before the Court.

105 I do object to his reading portions and trying to characterize the portions which is what he has been doing.

Mr. PADWAY. Well, I should hope that it is the privilege of counsel to characterize, if that is the term that counsel wants to use, but my term is "interpreting" the English language.

I am just interpreting what the Government departments and Government officials and agents have written, and I am injecting nothing in there that is not in there.

Now, if the record that is attached to the complaint—now, I know it hurts, but it is the truth, nevertheless. That is what we were told to do.

We concluded that we had a right to bargain respecting wages, hours, and working conditions.

We did more than that. We said there had been a violation on the part of the Government with respect to weights and other matters. Had we the right to make that declaration and make that claim, it may have in some respects been unfounded—the facts may have proved otherwise—but at least we had the right to make the claim and having made the claim we had the right to bargain respecting them, and we did not have the right to expect the Government to say, "With respect to those matters which we claim to be covered by the contract, go and bargain with the private owners of those companies."

106 The point is it is not a sovereign function. That is the purpose of making this argument. It is not for the purpose of establishing the truth or falsity of the things which are described in the letter. It is to establish that such a letter was written, such an argument was made.

The Government said thus and so; whether it had the right to, or intended to or whether it did, is not the point I am addressing myself to.

I am addressing myself to letters that were sent by the Government to Mr. Lewis in response that the Government live up to certain terms and agreements, and that they bargain with him respecting them, and the answer was respecting those matters, "You had better bargain with the private owners."

And, if he had, I repeat, and if they rejected our plans and our requests, where would we be? The Government would come in as it says now, and say, "You cannot cease work."

Now, I think if there is any doubt about the situation we find ourselves in, that doubt should be resolved in favor of those who are cited here to appear for contempt. The doubt should be resolved in our favor.

My associates hand to me here Exhibit N attached to the complaint which is a letter addressed to Mr. Lewis by Mr. Krug, signed by
107 Mr. Krug, and after the notice of November 15 was sent to Mr. Krug.

It reads, "In view of the important national considerations mentioned by the President in his statement of today, and in view of the official ruling of the Attorney General as to the obligations of the United Mine Workers under their contract, I again urge you to reconsider the position indicated in your letter of today and to enter into

conferences with the Bituminous Coal Operators, Negotiating Committee, without loss of the coal production which is so critically needed at this time."

The COURT. Now, what that letter, as I understand it, meant is this: that you, Mr. Lewis, and United Mine Workers, are violating your contract, and in order to avoid a stoppage of the mines, in spite of that fact if you can negotiate with the owners of the mines, why, do so.

Now, that is what the letter means as I understand it.

Mr. PADWAY. Assume it means just that and nothing more, although I respectfully say that I read more out of it, but assuming that that is all it does say, is that consistent?

Or, I will put it this way; in my view of the case, it is inconsistent with a claim of exercise of sovereign function.

That is what I am arguing now. Your Honor may disagree
108 on that analysis, but I am not misstating the facts as counsel would have you believe. I am drawing a conclusion from that that when such a letter is sent and such answers are given in response to requests that we have made——

The COURT. No; but your request was based on the theory that Section 15 of the Bituminous Coal Agreement was in effect.

Mr. PADWAY. Yes.

The COURT. And the Government could not concede to that. But the Government said, "If there is any way in the world we can get out of this trouble and avoid a cessation or what amounts to a strike and a national calamity, you go to the operators and, if you can deal with them, why, we will pass by the fact that you are not willing, as we say, to abide by your agreement and negotiate under Section 5 of the Smith-Connally Act."

That is the way I understand it.

Mr. PADWAY. Right. It is susceptible to that interpretation, but, nevertheless, that negatives a sovereign function.

Now, the purpose of referring to these letters and correspondence is to indicate to this Court that the record shows that the Government was not acting under a sovereign function, and as a result we are under the Norris-LaGuardia Act. Nothing can be more forceful than these letters. For instance, here is another proposal.

109 "Pursuant to regularized and established procedures in all cases where, under the War Labor Disputes Act, the Government had taken over the administration of certain industries, the Government in the instant case issued formal regulations for the operation of coal mines under Government control, all of which are published in the Federal Register"—and he cites the Federal Register—"thus, Section 5 of the afore-mentioned regulations provides: 'The existing organization of the mining company will be utilized, and the company will continue operation in the regular course of business as a going enterprise, conforming with such directions as the Government may issue.'

And another paragraph:

"'All properties in the possession of the Government shall be operated in a manner consistent with the fact that title to the properties.'"—and I underscore that word "title"—"'that title to the properties remains in the owners thereof and that the Government
110 having temporarily taken possession or custody, will assert

only such rights as are necessary to accomplish the national purpose of continued and maximum production.'"

The COURT. Just a minute. That is just what they took them over for, to continue production.

That was the purpose of it, Mr. Padway, to avoid an interruption of production.

Mr. PADWAY. That may very well be true, but that does not make of ownership and control such as this a sovereign function.

Mr. Hopkins reminds me that they specifically renounced—there was a renouncement of sovereign function.

What the Government did is set forth in these rules and regulations, or rather the applicable rules and regulations, those which I read, but they are all of a negative character. They negative sovereign function.

Now, counsel may argue otherwise, but there is no consistency between sovereign function and regulations promulgated in the wording and nature of these regulations.

Now, here, Section 40 proceeds this way:

"None of the provisions of this section 40, and no action that shall be taken pursuant to any of them, shall be deemed to constitute acquiescence by the Administrator in any claim that operations during the period of Government possession and control were for
111 the financial account of the Government."

No interest at all financially.

Here we have the true nature of the administration of the mines under the seizure perfected by the Government, namely, a business enterprise and not a sovereign function. By this regulation, the mine operators have been authorized to retain whatever profits may accumulate during the time the Government administers the mines.

Now, Section 23 (d) is, standing by itself, entirely conclusive of the issue of sovereignty in this case.

It provides:

"Nothing in these regulations shall be construed as recognizing such personnel as officers and employees of the Federal Government within the meaning of the statutes relating to Federal employment."

Now, here we are told "You are not our employees. You are not working for us. These enterprises are not ours."

And now, I say, we are told by the Government, "We will derive no profits therefrom. You do not work for us."

And now we are told that this is a sovereign function.

Now, I say the entire characterization of the enterprise by the Government itself in its regulations and in the rules promulgated, disavows those necessary elements that would give validity to
112 the sovereign function.

Now, Section 24 of the regulations provides in part as follows:

"The companies are expected to meet all Federal, State, and local taxes, contributions, and assessments, in the customary manner."

We need hardly remind the Court of the basic fundamental principle that a sovereign, exercising sovereign functions, may not be subjected to tax by any other sovereignty.

Citing M'Culloch v. Maryland.

Section 24 also provides in part:

"The mining companies are deemed to remain subject to suit as heretofore."

Now, here is a private enterprise which the Government recognizes as a private enterprise, maintains as a private enterprise, exercises its taxing authority, every element of which is inconsistent with a sovereign function, and now we are told that we lose the benefits of the rights of other law such as in the Norris-LaGuardia Act and similar laws, because the Government has take ontrol.

In other words, the Government itself imposes legal obligations that are to its benefit in the matter of taxation upon the companies and holds them subject to those laws, either gives them the benefit or the detriment of them, but the like benefit or detriment should not
113 be accorded us by similar laws that protect our interests and our rights. And I say that is not consistent with the sovereign function.

I think that I will dwell no further on that point. If the record that is attached to the exhibits as part of the record in the complaint, then I think the Government out of its own mouth, so to say, disqualifies itself in the matter of sovereign function.

If there are other reasons that the Government has and may claim for the request of the order, that is another thing, but on the basis of sovereign function, the Government has said, "We are not engaged here in a sovereign function."

Now, my associate suggests that a page or two of the following article be read to Your Honor, and that is:

"C. This is a case involving and growing out of a labor dispute. That being so, and there being a complete absence of compliance with the requirements of the Norris-LaGuardia Act, the Court had no jurisdiction to issue the temporary restraining order and hence the order was void ab initio."

As shown above, the Government seeks to escape the str tures and the limitations of the Norris-LaGuardia Act on the single and exclusive assertion that the Government in administering the bituminous coal mines is acting in a sovereign capacity.

114 By necessary implication, therefore, the Government thereby concedes that if their point of distinction is without merit then under the language of the Norris-LaGuardia Act and the authoritative decisions interpreting and applying it, this case arises and grows out of a labor dispute. Accordingly, it may perhaps be excessive to analyze that language and those decisions and to show their complete and conclusive application to this case.

Nevertheless, in order that there be no possible doubt, we think it appropriate briefly to discuss the statute and the relevant adjudications as they may apply to the undisputed facts in this case.

Section 13-C of the Norris-LaGuardia Act provides in part as follows:

"The term 'labor dispute' includes any controversy concerning terms or conditions of employment."

That this case involves a controversy concerning terms or conditions of employment will not, indeed it cannot, be denied. It is affirmatively and unequivocally set forth in explicit terms in the pleadings filed by the plaintiff. Thus, the immediate controversy which eventuated in the notice of November 15, 1946, was initiated by the Lewis letter of October 21 addressed to the Secretary of Interior, and which is Exhibit E of the complaint.

115 Mr. Lewis stated to Secretary Krug that the Government had misinterpreted the agreement respecting pro rata vacation payments and in interpreting the manner in which railroad weights rather than tipple weights were being used to compute the payments due the Welfare and Retirement Fund, both of which clearly are encompassed within the statutory phrase "terms or conditions of employment."

In addition, in that letter, Mr. Lewis requested a conference for the purpose of negotiating new arrangements affecting wages, hours, rules, and all other pertinent matters, which too clearly is within the meaning of the statutory phrase "terms or conditions of employment."

Now, is that status of a labor dispute lost by a mere assertion on the part of the other side—rightly or wrongly—"Mr. Lewis, you are wrong, and we don't want to have anything further to do with you with respect to these matters."

And I suspect that that was, while not definitely stated by the Government, that that was their idea.

In other words, it did assume, and that is the only position on which you can say it assumed the status of an employer, was that "We are not willing to negotiate with respect to that."

116 The old stereotyped answer given by employers prior to the passage of the National Labor Relations Act, where collective bargaining in good faith was made compulsory, the Government throughout in its attitude and in its action in this suit has simply adopted the philosophy of the good old-time reactionary employer in handling this matter.

Now, those are my opinions, and I express them based upon such knowledge as I have of the controversy.

But we may go even beyond that. Under the Norris-LaGuardia Act, Section 1, "It is not necessary that an actual labor dispute be the direct and immediately proximate cause of the request for an injunction. It is only necessary that the case involve or grow out of a labor dispute, and any possible suggestion that the instant case does not involve or grow out of a labor dispute must necessarily be whimsical and frivolous in the extreme, for the very presence of the executive department of the Government in this case, and in this cause, is necessarily premised upon its alleged authority under a statute officially designated as the War Labor Disputes Act.

Pursuant to that Act, Executive Order No. 9728, Exhibit A of the complaint, includes among other things an express Presidential finding and proclamation that there are threatened interruptions in the operation of the mines producing bituminous coal as a result of
117 existing or threatened strikes and other labor disturbances.

Hence it is clear that the crucial issue in this entire controversy, namely, the dispute respecting the termination date of the Krug-Lewis Agreement, is one that manifestly involves and grows out of a labor dispute. For, had there been no labor dispute, there would not have been and could not have been any Krug-Lewis Agreement and there could not have been any controversy over any clause within that agreement.

Moreover, the labor dispute between the private mine operators and the union which was the occasion for the Government seizure of the mines on May 21st, 1946, has never been resolved.

The COURT. Now, what has never been resolved?

Mr. PADWAY. The dispute between the private mine owners and the United Mine Workers, which gave rise to the seizure of these mines, has never been resolved.

So there is a continuing labor dispute up to the present moment except as resolved by agreement for the moment or for the time the Government is in control and in the agreement that was entered into by Krug and Lewis.

Now, I think that we have made clear, or endeavored to make clear without limitations, that we have here a labor dispute. That the Government is not exercising a sovereign function.

118 Now, may I address myself a few moments to a very important phase of this case which has to do with the injunctive decree.

The decree was worded, in my humble opinion, in the language of the Norris-LaGuardia Act—or War Labor Disputes Act, the Smith-Connally Act. The language was accepted from that statute and utilized in the decree, and in other respects it has adopted the old-time injunction which has been adopted by employers who sought to restrain workers in the exercise of rights and functions in cases similar to Duplex-Deering case, Bedford Stone Company case, the Debs case, and a host of cases in between.

It is remarkable how the Government in this instance, asking for a restraining order, should have jumped or pounced upon these cases that were so vigorously condemned in the committee reports leading to the Norris-LaGuardia Act.

Let us take, for instance, this language. I am addressing myself now to the constitutional denial of freedom of speech, freedom of the press, and peaceable assemblage, and I maintain that the injunction falls in that it denies to the United Mine Workers, its officers and members, the right to exercise those constitutional guaranties.

Here is the language from the Smith-Connally Act, "And from coercing, instigating, inducing, or encouraging the mine work-

119 ers at the bituminous coal mines in the Government's possession or any of them, or any person to interfere by strike, slowdown, walk-out, cessation of work or otherwise."

Now, that is addressed to the single individual as well as to the collective employees. Because, as pointed out now, "ordered that the defendants and each of them and their agents, servants, employees, and attorneys, and all persons in active concert or participation with them, be and are hereby restrained."

120 Now, it is very significant to us that in this day and age we should find the Government petitioning to deny to us constitutional guarantees of freedom of speech and freedom of the press.

It may well be that tomorrow the United Mine Workers may desire to picket those mines. Picketing is merely a form of peaceful patrolling, as a notification or an announcement to the world that a grievance exists between those who picket and their associates and members and the particular employer or mines.

Freedom of speech, if the Court please, the guaranty of freedom of speech is expressly imposed upon—I mean the right and the denial of that right is expressly imposed upon the Government. As a private individual you, Your Honor, may restrain me from speaking. If I am

in your employ and you don't want me to talk to your competitor, you may say, "I don't want to talk to that competitor, or I will discharge you if you do." That is your right.

The guarantee of freedom of speech or freedom of the press is a constitutional guarantee to the individual as against his government; that those are rights the Government cannot take away from him. They are as hard and fast, though not quite as old, as the guarantees exacted from King John in 1215. They are consistent with the principles on which the revolution was founded here. They are
121 enunciated clearly in Tom Paine's "Common Sense," and the pamphlets known as the "Crisis," and it was for those guarantees that we fought, and it was a guarantee by the Government that against the Government they assert those rights and we will not take them from you.

Now, whether it be by statute or be by injunctive decree, it was decided by the United States Supreme Court in the Swing case that an injunctive decree that deprives workers or persons of those rights are as unconstitutional as though it were a statute or any other law that deprived us of it.

This decree here, if we were to encourage a continuance of the cessation of employment, individual or in concert by picketing, by exercising that right of freedom of speech, we would be in violation of the injunctive decree.

The United States Supreme Court in the Swing case says that the Court cannot, by an injunctive decree, deny workers the right to peacefully picket, peacefully patrol, persuade others, or exercise the freedom of speech.

We have been told to withdraw a notice which was published, sent to our members, or at least brought to their attention, sent their employers and published in that way, which is not any more than an exercise of freedom of speech. Not only have we been told we cannot do it, but having done it prior to the issuance of the injunction,
122 we are now told to recall that exercise of freedom of the press or be punished for contempt.

Freedom of speech, if the Court please, is dwelt upon in connection with picketing in labor injunctions in one of the most momentous opinions issued by the Supreme Court of the United States.

The Court. The Court understood from the proceedings that the Government proceeded on this theory, that whenever the President of the United Mine Workers of America proclaimed that no contract existed, or gave notice that no contract existed, that immediately the employees ceased to mine coal.

Under Section 6 of the Smith-Connally act it is illegal during the emergency to incite to strike.

Your theory is, as I understand it, the fact that a notice was given that no contract existed, even though that notice would inevitably result, as was known by the person giving the notice, in a strike, that it was not illegal.

I think it was Thomas Grey who said, "A rose by any other name is still as sweet." And of course the Government will naturally argue that and contend that a notice which would inevitably result in a strike is not an incitation to strike, is simply a subterfuge. That is what their argument would be, whether it is true or not correct.

123 Mr. PADWAY. I am not in disagreement with Your Honor's interpretation of the War Disputes Act, but I should argue vigorously here, if that Act were before the Court as an issue, as I have done in three other courts, that there is no more constitutionality to the Smith-Connally Act, in depriving workers of the rights that they have with respect to freedom of speech and with respect to press and assembly.

The COURT. The Court does not see that freedom of speech is involved, and the Court understands, as you understand, that this Act was a war emergency act.

Mr. PADWAY. A war emergency act I think it was, by principle at least, held—the name escapes me for the moment, but Justice Hughes wrote the opinion; the phrase is this: That the War Emergency does not bring into play powers which are unconstitutional.

I think Ex Parte Milligan may be the case I have in mind. It doesn't create rights that are unconstitutional, or obligations that are unconstitutional, but we find in war emergencies that powers that are latent under the Constitution or not previously exercised because there was no occasion for them, may arise.

The COURT. That is exactly the point, Mr. Padway.

Mr. PADWAY. If the Court please, that is the point we make; that regardless of all those you cannot by the Smith-Connally Act or

124 by any other Act deprive a worker of the right to exercise his freedom of speech. That is constitutional.

Either the decisions mean what they say or they do not mean what they say. Either the constitutional guarantee is there or it isn't there. If men have the right under the Constitution——

The COURT. There is nothing in this proceeding so far to show any deprivation of freedom of speech within the meaning of the Constitution.

If the United Mine Workers of America had no right to call a strike, then the mere fact that they called a strike by serving a notice, by what, as I said before, the Government will say was a subterfuge, does not make the denial of the right to post a notice the denial of freedom of speech.

Mr. PADWAY. Well, if the Court please, we are obliged to take a contrary view——

The COURT. Naturally; that is the reason you are here.

Mr. PADWAY. And I think that, not because of any extraordinary persuasive powers I have, relying upon the judgment of this Court upon deliberation I am quite sure, though that is probably an extravagant phrase to use at this moment, Your Honor will agree with me.

The COURT. Well, I have agreed with you before and have disagreed with you.

125 Mr. PADWAY. Yes, sir. Let us see how far I will succeed now in bringing Your Honor around to an agreement on my thoughts.

Mr. SONNETT. I am reluctant to interrupt. However, the restraining order which Your Honor signed will expire at 3 o'clock today. Counsel has been talking all day, and I have not had an opportunity to reply to that. I have not yet asked for an extension of that order which I think exists, for another ten days. If Your Honor will grant the extension of the temporary restraining order for another ten days I am content to wait until counsel finishes, however long it takes.

The COURT. Very well.

Mr. SONNETT. Do I understand the extension is granted?

The COURT. Yes, sir.

Mr. SONNETT. May the record indicate that the individual defendant is in court at the time of the granting of the extension?

The COURT. As I understand it, it was stated by defendants' counsel that Mr. Lewis was here not only in his capacity individually but representing the United Mine Workers. Isn't that true?

Mr. HOPKINS. Yes.

126 The COURT. But I expect that order should be in writing, sir.

Mr. SONNETT. We will prepare it, if the Court please, as soon as we are able to do it. I would respectfully request that the Court's extension at this time, entered in the record in the presence of counsel, constitute an extension for ten days of the restraining order, within the rules.

Mr. HOPKINS. We can, from the defendants' viewpoint, make no concession to the Government here in reference to its expressed desire as now just made, asking this Court for an extension.

The COURT. The only purpose of the extension, sir, is to conclude this case, that is all. I do not know how long it will take.

Mr. HOPKINS. There may be, from the defendants' viewpoint, other considerations that we do not undertake to bring before this Court at this time, other than to read an excerpt from Rule 65.

The COURT. I think the Court better take a recess for fifteen minutes.

Mr. SONNETT. May I say, Your Honor, we have it already coming up and we will have it presently and the Government will have it at the conclusion of the recess.

The COURT. Yes; I know, but you ought to have it before 3 o'clock.

127 Mr. SONNETT. Yes, indeed. We will have it in a few minutes.

Mr. HOPKINS. Then we may be heard on this point after the recess?

The COURT. I understood that it wasn't necessary to have a recess because you have it prepared already. I can hear you now. It will not be necessary to have a recess. Proceed.

Mr. HOPKINS. If Your Honor please, in order that the defendants' position be clear, we now ask Your Honor's indulgence to hear Mr. Kaiser upon this precise point.

Mr. SONNETT. May I submit, if the Court please, before Mr. Kaiser commences, a proposed form of order extending the temporary restraining order, for such disposition as Your Honor sees fit to make.

Mr. KAISER. If the Court please, in opposing this request, we rely exclusively on Rule 65, from which I now read:

"and shall expire by its terms within such time after entry, not to exceed ten days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period."

So that the only possible ground for extension, aside from consent of the defendants, is good cause shown.

128 The COURT. Good cause? This case is on trial. That is good cause.

Mr. KAISER. That is precisely what I am about to address myself to, if Your Honor please. I continue to read from the same rule:

"The reasons for the extension shall be entered of record. In case

a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character."

The COURT. That is referring to a temporary injunction, not to another restraining order.

Mr. KAISER. "In case a temporary restraining order is granted without notice, the motion for a preliminary injunction——"

The COURT. But this restraining order is granted on the provision of the rules which states that it lasts for ten days unless extended by the Court for good cause.

Mr. KAISER. For good cause; but, if the Court please, if I may be heard for a moment——

The COURT. I know, but I can't hear you too long about this.

Mr. KAISER. But if Your Honor please, the purpose of this rule is not to permit to go too long an ex parte restraining order without opportunity to argue on the motion for temporary injunction. If the Court please, in an ordinary case, if the plaintiff desires indefinitely to continue an ex parte order he need only cite for contempt. That is the reason the rule says that the argument on the motion for a temporary injunction which will continue the restraints of the temporary restraining order must take precedence over all other causes.

Mr. SONNETT. If Your Honor please, I am sorry again to interrupt. The several counsel for the defendants have been arguing before this court for three and one-half hours approximately.

In view of the imminent expiration of the time, I think that good cause has been shown beyond any test required by any and all rules.

I respectfully request that Your Honor sign an order in the form submitted; that the Clerk be directed to certify a copy, and that the Marshal be instructed to serve that or that the defendant's counsel accept service for the defendant who is here in court.

The COURT. The motion is granted.

Mr. HOPKINS. If you Honor please, let it be noted for the record that neither do we waive, or under the suggestion made by counsel, accept service. With due deference to the Court we take exceptions to Your Honor's ruling and now make notice of appeal upon that point.

The COURT. Proceed.

Mr. HOPKINS. Wait just a second. If the Court please, we cannot, we respectfully submit, undertake to accept service.

If the Government undertakes, as it does, sir, to ask for this order and it is issued, then we call for strict compliance of the rules, and we cannot accept service of it.

Mr. SONNETT. We will undertake to serve Mr. Lewis, if the Court please, upon his departure from this building. I would respectfully request a mandatory direction from Your Honor to Mr. Lewis individually and as president of the United Mine Workers to take or send no communications out of this building pending an opportunity on the part of the Government to serve him.

The issues at stake are entirely too great to be enmeshed in three and one-half hours of technical, legal argument such as counsel has been resorting to all day, and then for counsel to assert they will not accept service of an order of this sort.

The COURT. Proceed.

Mr. HOPKINS. To which we take due exception and note our appeal, Your Honor.

The COURT. Will counsel approach the bench?

(Thereupon, all counsel approached the bench and the following proceedings were had:)

The COURT. Is it the theory of counsel that this order can't be served in the courthouse?

Mr. SONNETT. Not in the courthouse, Your Honor, as such. I think Your Honor can issue a mandatory direction, in the presence of the court.

The COURT. That has already been done. All right, gentlemen.

132 (Thereupon, all counsel resumed their places at the trial table, and the following proceedings were had:)

Mr. PADWAY. May it please the Court, I regret to say that I see no ambiguity in the order issued by Your Honor with respect to the right to picket.

I must construe that, as it is written, as a denial of that right. If, of course, counsel will concede and the Court would say that we are not denying you the right to picket, then, of course, the argument I am about to make——

The COURT. The Court says, Mr. Padway, and says respectfully, that the order means exactly what it says.

Mr. PADWAY. Well, then, exactly what it says means to me that we have no right to picket, patrol the mines, because that in and of itself would be an encouragement or an inducement to prevent operation or to continue cessation of the refusal to work, failure to work, whatever you wish to call it. Consequently, I must then address myself on the basis of that right.

We have, of course, a number of cases that deal with that subject, but particularly the very earliest case with respect to picketing and the right to do so in the exercise of freedom of speech, was the Senn case. Again I make these references rather to emphasize a knowledge of the subject than to be telling the Court my experience in the matter, but that was a case that I tried in the courts and argued before

133 the Supreme Court of the United States.

I had endeavored for years, in the course of my experience with this branch of the law, to have the courts rule or look upon people picketing, or patrolling, as synonymous with freedom of speech. The occasion did not arise to present those issues to appellate courts, but they did arise soon after the Norris-LaGuardia Act was passed, or the State Norris-LaGuardia Act of Wisconsin and the Federal Act, and, as a result of that case that I'm about to refer to, the Senn case, a case that happened in Milwaukee, Wisconsin, the question was raised by the other side as to the right to peacefully picket on constitutional grounds.

I urged that before the Supreme Court and, while the Supreme Court did not go fully into the question, it showed which way it was thinking in the pronouncements made in that particular case.

The Court said there, in Senn versus Tile Layers' Protective Union, as follows:

"* * * Members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution."

I quote that not as a definite pronouncement that picketing is synonymous with freedom of speech, but that the right to make
134 the announcement of facts concerning a labor dispute, which is all that the statement of Mr. Lewis to the Department and to the Government was, on November 15, but then came the issue very directly in Thornhill versus Alabama, because there the statute inhibited people picketing in connection with a labor dispute.

Again it was my privilege to have argued that case in the Supreme Court of the United States. The facts were more direct than they were in the Senn case, and I urged upon the Court that peaceful picketing was merely a form of freedom of speech and guaranteed by the Constitution.

The Court there said:

"In sum, whatever the means used to publicize the facts of a labor dispute, whether by printed sign, by pamphlet, by word of mouth or otherwise, all such activity without exception is within the inclusive prohibition of the statute.

"Freedom of discussion, if it would fulfill its historic function in this Nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period."

The COURT. We will suspend for just a moment.

(Thereupon, a deputy marshal escorted Mr. Samuel L. Kaufman before the Court and the following proceedings were had:)

135 The COURT. The Court is informed, sir, that you have been endeavoring to talk to the jury in the other courtroom, the jury which will be empaneled in this court, if it is empaneled, and what have you to say about that?

Mr. KAUFMAN. First, I request, if I am in order, a copy of the document which brought me here. It was just shown to me.

The COURT. It is not necessary to do that.

Mr. KAUFMAN. It is not necessary? Then that is quite all right.

The COURT. If this contempt was committed, it was committed close enough to interfere with the proceedings.

Have you or have you not attempted to talk to the jurors about this case?

Mr. KAUFMAN. In the form in which you put the question, my answer must be "No," but I have a voluntary statement to make, if you desire it, sir.

The COURT. I will put another question: Will you agree not to interfere or talk to the jury any more about this case?

Mr. KAUFMAN. I resent that question most respectfully, because I did not interfere with the jury. What happened was that there is a toilet over there and I went in there——

The COURT. I am just asking you if you will agree not to do it.

136 Mr. KAUFMAN. Not to do what?

The COURT. Not to talk to them any more about this case.

Mr. KAUFMAN. I haven't talked to them. I talked to only one man, a very fine gentleman, and I talked to him about the weather, and I told him that recognizing that as a group of jurors that I recognized

the limitations on the jury, and I discussed what a fine day it was, and nothing else, and it was one man only, and I say this with all great respect for this Court.

The COURT. You haven't talked with any of the jurors in this case?

Mr. KAUFMAN. I believe I have answered the question by saying I talked to one man, a man wearing a gray suit, a tall gentleman, and the only subject matter I covered was what a fine day it is.

The COURT. Some of the jurors reported to the deputy marshal that you attempted to talk to them.

Mr. KAUFMAN. I will be glad to face any of them.

The COURT. The Court has nothing further to say than this: Hearing no further complaints, the incident is ended.

Mr. KAUFMAN. I believe, Your Honor, the incident is not altogether ended.

The COURT. It is ended as far as this Court is concerned. I cannot hear you further.

137 Mr. KAUFMAN. I expect an apology.

(Thereupon, Mr. Kaufman left the courtroom and the following proceedings were had:)

Mr. PADWAY. May it please the Court, on the question of freedom of speech, in the Thornhill case the United States Supreme Court said this:

"Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period.

"In the circumstances of our times the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution. It is recognized now that satisfactory hours and wages and working conditions in industry and a bargaining position which makes these possible have an importance which is not less than the interests of those in the business or industry directly concerned. The health of the present generation and of those as yet unborn may depend on these matters, and the practices in a single factory may have economic repercussions upon a whole region and affect widespread systems of marketing * * * labor relations are not mat-

138 ters of mere local or private concern. Free discussion concerning the conditions in industry and the causes of labor disputes appears to us indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern industrial society. The issues raised by regulations, such as are challenged here, infringing upon the right of employees effectively to inform the public of the facts of a labor dispute are part of this larger problem. We concur in the observation of Mr. Justice Brandeis, speaking for the Court in Senn's case: 'members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution.'

"The range of activities proscribed whether characterized as picketing or loitering or otherwise, embraces nearly every practicable, effective means whereby those interested—including the employees directly affected—may enlighten the public on the nature and causes of a labor dispute."

Now then, we must urge upon this Court that this injunction, as we interpret it, prohibits us from doing the very thing that this Court said here we have a right to do. We have the right to picket.

The COURT. That was a Norris-LaGuardia case, wasn't it?

Mr. PADWAY. No, sir; that was a constitutional question on a statute, a so-called antipicketing statute in Alabama.

The COURT. Yes.

Mr. PADWAY. At the same time the United States Supreme Court handed down an opinion affirming the Thornhill case, but which dealt with a similar inhibition in an ordinance passed by a municipality in the State of California. This is so strong and conclusive that there is no escape from the fact that the decree here, if it enjoins our people from going out tomorrow, peacefully and in the presence of a mine, or mine entrance, wherever it may find its miners, and talk to them respecting their going or not going to work, their controversy with the Government or whoever it may be with is enjoined because it induces or persuades or encourages the continuance of the cessation of employment, then that decree is unconstitutional and a denial of freedom of speech.

In Carlson versus California—this is the text of the opinion, or part of it, it is said:

"The sweeping and inexact terms of the ordinance disclose the threat to freedom of speech inherent in its existence. It cannot be thought to differ in any material respect from the statute held void in Thornhill's case. The carrying of signs and banners, no less than the raising of a flag, is a natural and appropriate means of conveying information on matters of public concern. For the reasons set forth in our opinion in Thornhill versus Alabama, publicizing the facts of a labor dispute in a peaceful way through appropriate means, whether by pamphlet, by word of mouth or by banner, must now be regarded as within that liberty of communication which is secured to every person by the Fourteenth Amendment against abridgement by a State."

Now, I say this: it matters not what the so-called Smith-Connally Act says; it matters not what particular device or decree is entered; it matters not who is in control or possession of a mine, factory, or a mill, if this language means what it says, the right to quit work, the right to go on what we commonly term a picket line, to patrol and to ask and to announce and to persuade others not to do the same thing is nothing but the dissemination of information and synonymous with speech which is guaranteed to every person under the Constitution of the United States.

And where in the Swing case the court of Illinois issued an injunction similar to the terms issued in this case with respect to this particular inhibition, the United States Supreme Court said:

"All that we have before us, then, is an instance of 'peaceful persuasion' disentangled from violence and free from 'picketing en masse or otherwise conducted' so as to occasion 'imminent and aggravated danger.' Thornhill versus Alabama, 310 U. S. 88, 96. We are asked to sustain a decree which for purposes of this case asserts as the common law of a state that there can be no 'peaceful picketing or peaceful persuasion' in relation to any dispute between an employer and a trade union unless the employer's own employees are in controversy with him.

"Such a ban of free communication is inconsistent with the guarantee of freedom of speech. That a State has ample power to regulate the local problems thrown up by modern industry and to preserve the peace is axiomatic. But not even these essential powers are unfettered by the requirements of the Bill of Rights. The scope of the Fourteenth Amendment is not confined by the notion of a particular State regarding the wise limits of an injunction in an industrial dispute, whether those limits be defined by statute or by the judicial organ of the State. A State cannot exclude working men from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him. The inter-dependence of economic interests of all engaged in the
142 same industry has become a commonplace. The right of free communication cannot therefore be mutilated by denying it to workers, in a dispute with an employer, even though they are not in his employ. Communication by such employees of the facts of a dispute, deemed by them to be relevant to their interests, can no more be barred because of concern for the economic interests against which they are seeking to enlist public opinion than could the utterance protected in Thornhill's case. 'Members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution.'"

Now, if the Court please, let us assume tomorrow morning that these workers, or the officers of their unions were to decide, in order to enlighten the public with respect to the cause they are engaged in, because of dissemination of information which is untrue, mis-information, desire to place in the mouths of the mines, or anywhere else if you please where their members may be, or where the public may be, picket sign, or bills or pages of pamphlets or leaflets, or get on the radio, if you please, or make your statements to the press, as is now suggested by counsel, your order prohibits us from doing that, and yet it may be necessary for Mr. Lewis, because it has been done
143 before, to enlighten his workers and to enlighten the American public and to state that our cause is just and that our concerted cessation of work is just, and that we believe we should continue that concerted cessation of work, under the decree that has been issued in this case Mr. Lewis and the others can be cited for contempt. And I say that that flies in the face of the Constitution.

144 I do not know whether you really intended that. I do not know what Your Honor would do if that were brought here. I do not know if the Government even would decide to come here on a contempt charge of that kind, but nevertheless they have come here in this year 1946 with an amazing petition and position and asked this Court to restrain persons under pain and penalty of contempt from actually ceasing work. I do not know. That is the effect of the order.

In their brief they say this is a strike call. It may be termed that and it may not. The evidence will show, but assuming it is a strike, it is a peaceful cessation of work, indulged in by workers who under the Constitution have the right to so act and to so conduct themselves.

And regardless again of the so-called Labor Disputes Act, regard-

less of the Smith-Connally Act, regardless of what Congress may have done by statute, Congress could do no more than the State of Alabama did in denying these fundamental rights to the workers in Alabama, and the United States Court stepped in and said a denial of such a fundamental right runs counter to the Constitution of the United States, and the decree must be dissolved.

And when without statute a decree was issued by the Court in Illinois, in the Swing case, the Court stepped in and said the
145 fundamental right even of those who exercised it, even those who exercised it who were not in the particular employ of the particular employer, and there was no proximate relationship of employer and employee, that, too, was guaranteed by the Constitution and the exercise of that right could not be denied.

Since the Thornhill case came down, if the Court please, there have been a multitude of cases discussing the same subject, and state courts have accepted, as they were obliged to, of course, the principles enunciated by the United States Supreme Court.

Listen to language such as this:

"The exercise of arbitrary power by any department of Government, or agency thereof, is inconsistent with our democracy. Our guaranties against the exercise of such arbitrary power are found in the State Constitution, Article II, Section 35, which provides that 'No person shall be deprived of life, liberty or property, without due process of law'; and Article II, Section 10, that 'No law shall be passed impairing the freedom of speech'; and in the Federal Constitution, 'That no State shall deprive any person of life, liberty or property without due process of law.'

"Whatever our individual views may be on economic contro-
146 versies, such as are involved here, we cannot consent to legislative invasion of constitutional guaranties to the extent for which contention is made in this case. The line of demarcation between police power and constitutional guaranties is not always well defined. Where a law, such as Section 90 here under consideration, impairs freedom of speech, as it does in view of the stipulated facts before us, we have no doubt that it constitutes an invasion of constitutional guaranties, both under the State and Federal due-process-of-law clauses and the mandatory provision prohibiting the enactment of laws impairing the freedom of speech."

In Denver Union v. Truck Lines, 106 Colorado 25, the Court held:

"Aside from the statutory provisions which we have discussed, the legality of peaceful picketing has its basic roots in constitutional guaranties of liberty and freedom of speech. The importance of preventing restrictions of the enjoyment of these constitutional rights has recently again been emphasized in the case of Schneider v. State," and other cases cited in our brief.

"That the duty to prevent these encroachments upon consti-
147 tutional guaranties, even if the opinions expressed and the actions taken by labor organizations differ from our own views, rests not only upon the legislative, but also upon the judicial, branch of the Government cannot be questioned."

And here the Government contends that the guaranty of freedom of speech—or at least I imply that—that is all right, that constitutional guaranty is O. K., and you workers have the guaranty and

protection of it where in controversy with a private employer, but where you are in controversy with the Government, the Government that guarantees that right of freedom of speech and the right to exercise it, it doesn't apply.

In other words, everyone is within the Constitution, is obliged to adopt obedience to it but the Government itself, and I say there are no ifs or ands about that, there is no equivocation, there is no escape from the fact that this decree, as prepared by the Government and submitted to Your Honor will not permit Mr. Lewis to go tonight, as he steps out of this courtroom, and talk to his miners over the radio and say, "It is my opinion the contract has been breached," or, "that we haven't had bargaining in good faith, or have been denied it," and even though those statements were not true, nevertheless the decree denies him that and the Constitution guarantees him that right.

148 Either we have the Constitution to go by, or by the Government's contention, shall I say as I construe it, it has no application to the Government.

The Supreme Court in Washington said this:

"Relators contend that the problem presented in the cases at bar is one of freedom of speech, a right guaranteed by the First Amendment to the Constitution of the United States reading as follows: 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.'

"Relators argue that peaceful picketing is but a manifestation and a function of the exercise of freedom of speech and can be restrained only upon those grounds and conditions which warrant restraint in any other case involving freedom of speech.

"Peaceful picketing is a manifestation of the exercise of freedom of speech, and it can be restrained only upon those grounds and conditions which warrant restraint in any other case involving the test upon which abridgment of speech may be justified"—if they had this then they would be within their rights in applying for the in-

149 junction—"is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.

"The peaceful picketing in the cases at bar is but an exercise of the right of freedom of speech and is not of such a nature as to warrant the restraining orders."

The Court. Speaking of substantive evil, what is the limitation of substantive evil, in your judgment?

Mr. Padway. It has been defined in these very cases I am reading, Your Honor, as a clear and present danger to the lives and property of the individuals affected by the picketing. In other words, right there on the spot:

You will find cases that where the picketing was had at a certain plant, including rioting and the like, that, of course, was restrained. Where the picketing, however, went on a block away, was peaceful, had no tendency to encourage violence or destruction of property, that could be restrained.

The classical illustration given by Justice Holmes as to where freedom of speech commences and where it may stop, or rather the line of demarcation is on this order: Speech is used in connection, let us say, with a person who entered a crowded moving picture show
150 house and cried "Fire."

The COURT. His word was "theatre". I heard him deliver his opinion.

Mr. PADWAY. Did you? It is a good opinion.

The COURT. There weren't any moving picture houses at that time.

Mr. PADWAY. No, but he said one had no right to enter a thickly populated hall or lecture or place of amusement—I think that is what he used, a place of amusement—and holler "Fire"; that would not be an exercise of freedom of speech because of the clear, present, and immediate danger.

The doctrine is well set forth in all these cases.

In Murdock v. Pennsylvania, Justice Jackson stated:

"In my view the First Amendment assures the broadest tolerable exercise of free speech, free press, and free assembly, not merely for religious purposes, but for political, economic, scientific, news, or information ends as well."

The COURT. We will take a five minute recess.

(Thereupon, a short recess was taken.)

Mr. HOPKINS. If it pleases the Court, momentarily I should like to address myself to you, sir, most respectfully, and to Government counsel.

When an exception was noted by the defendant in reference to
151 the extension of the temporary restraining order, Your Honor, I suggested at that moment that the defendants did not feel that they could waive strict compliance. That is not to say, sir, and I now most respectfully say to you that was not intended to say that we do not accept an order from this Court now, or any time, any order that this Court promulgates under similar circumstances. It was merely, sir, to protect the efficacy and the fullness of the exception which I sought to note on appeal. I thought that should be stated to Your Honor, because in the heat of the moment I was saving my point, and that is the reason we do not refuse to accept.

The COURT. You still say you do not accept service?

Mr. HOPKINS. I do accept service of the order extending the temporary restraining order.

The COURT. I thought that was just saying you did not accept.

Mr. HOPKINS. At the moment, sir, I say to you now, sir, we do accept the order extending the temporary restraining order.

The COURT. It won't be necessary to serve it then later?

Mr. SONNETT. If the Court please, would Your Honor inquire as to which defendants the counsel is accepting service for now?
152 Mr. HOPKINS. For all of the defendants before Your Honor.

Mr. SONNETT. If Your Honor please, would Your Honor read the order of this Court to the defendant Lewis, individually and as president of the United Mine Workers, so that he personally is on notice of its exact terms?

Mr. HOPKINS. We except to that request because the defendant is here.

The COURT. I don't see any necessity for that.

Mr. SONNETT. I know of nothing on the record, if the Court please, which indicates the personal acquiescence of the defendant Lewis in the statement just made by his counsel, which contrary to the statement which counsel made a half hour ago.

I do suggest, in the interest of the record, that something be put on the record personally indicating acquiescence of counsel's statement.

The COURT. But Mr. Lewis is here in the courtroom, and his counsel is speaking for him, and counsel says he accepts service, and I think that ends it.

Mr. SONNETT. It does, sir, in the absence of any disavowal by the defendant, and I am quite content to rest on counsel's statement.

The COURT. Very well.

Mr. PADWAY. May it please the Court, there is just one more
153 point that I desire to make in this main argument, and certainly I am grateful to the Court for the time you have indulged us in, and were it not for the importance of it, as I said before, I should not impose upon Your Honor to this extent, but it is so important that this time you are allowing us now I think is time well spent for all of us.

I want to make one further point, and that is this: the order is tantamount to an imposition of involuntary servitude on the 400,000 miners, or more, involved. I say it respectfully; I am talking legally now; I am not indicating that Your Honor is disposed, or had in mind, to make slaves of these miners, but I argue the legal point of view, that an order such as this cannot be construed otherwise than an order imposing involuntary servitude.

First, I have the respectable analysis by Justice Brandeis, in the case that I quoted, in that dissent where he said, in the Bedford case, "If men may be compelled to work by a decree of this nature that reminds of involuntary servitude."

And, as I recall, there were at least two and perhaps three of the justices who joined in that dissension.

Then again we have here this situation—I think it was fundamental in our jurisprudence since this nation was established—that men have the right to work or not to work as they see fit.

154 The COURT. Well, do you think it is necessary to argue that, Mr. Padway?

Mr. PADWAY. Oh, very important in this case—tremendously important; because I think——

The COURT. The Court agrees with you.

Mr. SONNETT. So does the Government, Your Honor.

The COURT. Sir?

Mr. SONNETT. So does the Government.

Mr. PADWAY. All right. I think this case is ended. If that is what the Court wants us to understand is the law, and the Government agrees, namely, that men have the right, or not, to work, and they are not working—what are we here for? Men have ceased working, and don't want to work. What is this case about?

This case is about the empty act, that is all it would be, of Mr. Lewis writing a little order and saying, "My order of such and such a day is hereby cancelled," or "My statement of such and such a day is hereby cancelled." That is what the Government seeks—is it? Will it assuage the grief or satisfy the Government to say, "Well, it made

Mr. Lewis write such and such an order?" If that is the satisfaction it desires to glean from this proceeding, that is another matter.

That is not what the Government is here for, and that is not
155 what the injunction does, as interpreted, if the Court please.

The injunction is that men shall not quit in concert or singly and that the order is asked for the purpose of having Mr. Lewis issue an order which will be interpreted by his people that they must go back to work.

If it is not for the purpose of getting them back to work, to use a common colloquial phrase, what is all the shouting about? If these men are not enjoined from quitting, either singly or in concert, if these men don't have to go to work, then what is all the noise about?

Does counsel for one moment believe that all that needs be done is to press the magic wand, have Mr. Lewis issue an order and tell them to go back, and assuming that is so—it is to get them back by a decree, a mandatory decree.

It restrains them from talking about it or persuading others concerning it; from getting together and deciding to stay out, and mind you, this is not a conspiracy action, this is a straight out-and-out injunctive decree—this restraining order—that the men shall go back to work. It was utilized, if you please, to break this concerted cessation of employment. It was utilized to get them back. If it was not utilized for that purpose, then I don't know what it was utilized for.

The fact of the matter is, in the brief of the Government, the Government forcefully states that this is a strike, and they want—
156 I am not giving the exact language used by counsel, but it is only susceptible of that meaning, and they want it called off and want them back at work, and remember—if the Court pleases—this is not an injunction directed only at Mr. Lewis, it is directed at every mine worker. They are named as defendants, and the language of the injunction is to all and every person.

Mr. SONNETT. That is not true, Your Honor. Counsel is deliberately or otherwise misstating the record.

Mr. PADWAY. Let me read it.

Mr. SONNETT. Defendants in the suit are United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as president thereof—as Your Honor well knows.

Mr. PADWAY. I don't know what that means, if the Court please; just because the thing is entitled as counsel describes it—I am going to the decree, the description of the United Mine Workers is merely a designation of an organization composed of some 500,000 or 600,000 miners, and then, we go to the decree to see who it shall affect.

It does not affect the United Mine Workers, as United Mine Workers, it affects Mr. Lewis, because he specifically is named; but it affects every member because that is the language of the order, and I will read it, since counsel seems to have some misapprehension of his own order:

"Ordered, That the defendants and each of them and
157 their agents, servants, employees and attorneys, and all persons in active concert or participation with them be and they are hereby restrained——"

Mr. SONNETT. Will counsel complete the reading of the order?

Mr. PADWAY. "—pending further order of this Court, from permitting to continue in effect the notice heretofore given by the defendant John L. Lewis, to the Secretary of the Interior, dated November 15, 1946, and from issuing or otherwise giving publicity to any notice that, or to the effect that the Krug-Lewis agreement has been, is, or will at some future date be terminated, or that said agreement is or shall at some future date be nugatory or void at any time during Government possession of the bituminous coal mines and from breaching any of their obligations under said Krug-Lewis agreement and from coercing"—this is to every and all persons—"and from coercing, instigating, inducing, or encouraging the mine workers at the bituminous coal mines in the Government's possession, or any of them, or any person, to interfere by strike, slow-down, walk-out, cessation of work, or otherwise with the operation of the said mines by continuing in effect the said notice or by issuing any notice of termination of agreement or through any other means or device."

158 Counsel thought that he had it confined only to the issuance of Mr. Lewis' order. There could not be a more comprehensive language than was used in this to not only include the order that Mr. Lewis issued on the 15th, but by any other means or device, as far and as wide and as broad and as high and as deep as the English language can be placed in understandable composition, and from interfering with or obstructing the exercise by the Secretary of the Interior of his functions under Executive Order 9728, and from taking any action which would interfere with this Court's jurisdiction, and so forth.

The last part is not necessary.

Mr. SONNETT. Oh, the last part is very material.

Mr. PADWAY. Then, I will read it.

Mr. SONNETT. Please read it.

Mr. PADWAY. Surely, I will read it, I am very obliging: "from interfering with or obstructing the exercise by the Secretary of the Interior of his function under Executive Order 9728."

Now, there was a semicolon before the word "and." It isn't tied up with anything. It is an inhibition, by itself; and "from taking any action which would interfere with this court's jurisdiction or which would impair, obstruct, or render fruitless the determination

159 of this cause by the Court."

Now, Mr. Sonnett may take it upon himself to explain what that means.

To me, as Your Honor presented it a few moments ago, before the recess, it means exactly what it says—namely, every person, all agents, all attorneys, all persons connected with the enterprise, the members of the organization, are all enjoined from inducing, encouraging, or proceeding to do anything which will bring about the cessation of work and striking.

And, in the brief, if the Court please, here is the argument counsel makes: It was way in the early morning hours of this morning that I read that, I may not have absorbed it too well, but as I remember it, it did this—counsel made this statement—that Lewis knew, when he sent that letter, based upon the established policy of the United Mine Workers, "No contract, no work," that there would be a cessation of work, and consequently the mines would be shut down.

Then, an injunction is asked. What did it ask for, then? To maintain that particular status quo? To keep in force a cessation of work? Or, to ask the aid of this Court to revert that cessation of work and to have the men go back, on strike?

160 The COURT. No; to maintain the status quo until the injunctive process, the validity of it, could be determined. That was the purpose of the order.

Mr. PADWAY. Well, the status quo is, if the Court please——

The COURT. The status quo——

Mr. PADWAY (interposing). Your Honor's order was issued at what date—November 18.

The COURT. The status quo would have required Mr. Lewis to notify the miners that the contract was not terminated.

Mr. PADWAY. Well now——

The COURT. That would have maintained the status quo until we could have had this case tried.

Mr. PADWAY. That is exactly why the argument that I desired to make, and have stressed it on the basis of involuntary servitude.

What is involuntary servitude, if the Court please? It is very simple. Involuntary servitude is compelling men to work against their will.

The COURT. The Court does not mean that, sir.

Mr. PADWAY. Well, I respectfully desire to make that argument, because it isn't my argument; it is the argument of the United States Supreme Court and other courts.

The COURT. I don't see that, either.

161 Mr. PADWAY. Let's see if I am misleading the Court, or I can go ahead.

The COURT. I don't think you are misleading the Court. I am going to hear what you have to say, Mr. Padway.

Mr. PADWAY. I would like for you to do that, because I think there is, in all seriousness, much merit to that argument.

My concept of involuntary servitude is—compelling men, under the pain and penalty of punishment, to work against their will, assuming of course the work is not being performed as punishment for crime. That, of course, I assume we are not going to take into consideration, because none of these men are refusing to work or have been ordered to work, by Your Honor, because of a punishment for crime.

Now then, is this working against their will—it matters not whether you call it an injunctive decree or an obedience to the Smith-Connally Act or whatever it may be. It is apparent that these men, combined together, as a union, for their protection, for their aid and support, and their desire to attain wages, hours, and working conditions, and improved wages, hours, and working conditions, decided that if they disagree or cannot get what they want, they will cease work.

The Government concedes that, by the very request for an
162 injunction in this particular case. It says Mr. Lewis knew, when this order was issued, that they would cease work.

Now, the Government does not want the work to cease, and the Government has secured a decree.

The COURT. All the restraining order was, as a practical matter, was an order on Mr. Lewis, which is not by indirection, to order these men not to cease work until the merits of the controversy could be

determined, and of course the Court respects counsel and respects what you have to say; but, essentially, that is all the Court's order meant; and we think Mr. Lewis knew it; that is, I think he knew it—I suppose he knew it.

Mr. PADWAY. Now, if the Court please, I, speaking for myself, and my associates—we discussed this briefly, but among themselves they discussed it at length before I returned—certainly, in good faith, came to the conclusion that what this injunction meant was to have Mr. Lewis order these men back to work, in other words, to replace, or command them to remain at work.

Put it this way—command them to remain at work, even though Mr. Lewis, his Executive Board, the officers of the organization, and hundreds of thousands of these men desired not to.

Now, that is about the situation. If that isn't it, the interpre-
163 tation given to that particular order, then the men can remain out of work without any fear of punishment for contempt.

Now, I say that we must call a spade a spade.

The COURT. Yes, and you must review this thing in a practical manner, too.

Mr. PADWAY. That is right, that is right. I am glad Your Honor said that, because that was a phrase I was about to use, probably not "as a practical matter," but view it in its actual light. Its actual light is to get Mr. Lewis to do something which his members and he do not want to do, and the thing you want to get them to do is—abstain from refusing to work. That is a practical solution the Government seeks, and that is what the order commands.

The COURT. No; the order of the Court wasn't anything the Government did, it was the Court's order, the order of the Court—the practical effect of it—was seeking to maintain the status quo until the Court was able to determine the merits of the controversy between the United Mine Workers of America and the United States. That is all it was.

Mr. PADWAY. Now, if the Court please, and really—and whatever I do say, whatever I say is—and I cannot help putting it bluntly—Your Honor's order tells these men that they cannot strike—period.
164 And, tells them that if they go on strike, in the light of that order, that they will subject themselves to punishment.

The COURT. The Court didn't so understand the order.

Mr. PADWAY. I am very glad to hear Your Honor say that——

The COURT (interposing). And the Court signed the order.

Mr. PADWAY (continuing). Very glad to hear Your Honor say that, because it certainly is going to be a material aid to us.

The COURT. The Court does not think there is any real basis for misunderstanding of the order. The Court listened and will continue to listen, because it is important; but the Court thinks it is perfectly evident that the only possible purpose of that order was to maintain the status quo until it could be determined whether or not this agreement with the Government continued during the entire time that the Government had control of the coal mines; or, whether it could be terminated by the Unions in thirty days. Now, the maintaining of the status quo for eight or ten days could not have possibly, in the Court's opinion, injured the Union in any way. That is one thing the Court had in mind before the Court signed the order.

165 If the order had been obeyed, and the status quo had been maintained we could have come in Court and discussed this matter in a formal way, and determined the merits of the controversy without this very unfortunate situation.

Now, that is all there is to this case, sir, insofar as the meaning of the restraining order is concerned. That is absolutely all there is to it, and you can argue here for days and weeks, but at the same time that is all it meant as a practical proposition, and the Union saw fit not to allow the matter to remain in status quo until it could be determined judicially.

Mr. PADWAY. I will have to put it this way, if the Court please, whether it redounds to our advantage or disadvantage—I will have to say this: that maintaining the status quo was subjecting these members to involuntary servitude. I am quite mindful of how important that statement is, but let me add to that, this, if the Court please, that particular philosophy was presented to Congress, the maintenance of the status quo in the so-called legislation, including these cooling-off periods of thirty days or sixty days, less or more, in various spells. The intention may be well founded, but I say to Your Honor where a man is deprived of the right under a status quo order for ten days, ten hours, or ten minutes, if you please, that is involuntary servitude, just as much——

166 The COURT (interposing). Mr. Padway, I am sure you know that a court of equity has no power to direct an individual either to work or not to work. There isn't any question about that, and there could not be any misunderstanding about the scope of this order. There could not have been any misunderstanding about it.

The Court does not want to make a statement that is offensive, and the Court thinks that you have argued very eloquently and very interestingly, but the Court still says that all there was in this case, in the world, insofar as the restraining order was concerned, was to order Mr. Lewis to maintain the status quo and the Union the status quo until there could be a judicial determination of a matter which is very serious to all of the people of the United States, as well as to this Union; and nothing that you could say would change my mind about that, because I understand perfectly well what I had in mind, and I knew exactly what I was doing when I did it.

Mr. PADWAY. Well, again, there is no disagreement with that. The disagreement between Your Honor and myself, if it may be called that, is this: that the maintenance of a status quo is an imposition of involuntary servitude.

Now, I don't say that Your Honor may have intended that. I don't say that is what Your Honor had in mind, but that is what it

167 amounts to. What else can it amount to? Here are men who are placing confidence and reliance in their officers. It was the 15th of November that Mr. Lewis issued the order. It was the 18th that Your Honor issued the decree. The order had gone out already for the men to quit, and the Court stepped in and says, "Wait, Mr. Lewis; you withdraw that so these men do not quit."

I don't know just what it can spell; maybe that wasn't intended. I certainly believe Your Honor has a right, and Government has a right to determine if that would be the best course to pursue, but whether it was a lawful course or otherwise is a different matter, and I

say that when the order said to them on the 18th and said to Mr. Lewis, "Withdraw that order so that these men do not quit, and do nothing else to help them quit," not only to withdraw the order, but through any other manner or device, but even to encourage them to quit is prohibited by this order.

I say, if the Court please, that the ten days may appear insignificant with respect to the question, but it was certainly significant to the miners, and I say that the restriction was as much a restriction on the exercise of the right to work or the right not to work as it would be, if the Court please, as if a newspaper was told, "For one issue
168 or one day you are prohibited from publishing that press."

Would the Court for a moment in the event of the publication of a newspaper which was involved, for one moment listen to a request that it be enjoined because only one issue of a newspaper were involved? That would as much interfere with the freedom of the press as though the press were shut down for a month or two months, and I say that the command to withdraw an order and tell al the members, agents, and attorneys, and everyone else, after the order had been issued on the 15th it was as much a command to "stay on your jobs" as anything else could be; perhaps I am wrong. I am interpreting that, if the Court please, as involuntary servitude, because here in the cases that we have we find a principle announced. When we discuss the question of involuntary servitude we do not merely think in terms of the condition of slavery or slaves prior to the Civil War.

Here is the case of Bailey v. Alabama, in which the Court condemned a statute with respect to nonfullfilment of a contract for personal services.

"The plain intention was to abolish slavery of whatever name and form and all of its badges and incidents; to render impossible any state of bondage, to make labor free by prohibiting that control by which the personal service of one man is disposed of or coerced for
169 another's benefit, which is the essence of involuntary servitude."

In Stapleton v. Mitchell, 60 Fed. Supplement 61, Justice Murrah, writing for the majority in an opinion which nullified a candid antistrike statute, said:

"The right to peaceably strike or to participate in one, to work, or to refuse to work, and to choose the terms and conditions under which one will work, like the right to make a speech, are fundamental human liberties which the State may not condition or abridge in the absence of grave and immediate danger to the community. But by Section 8 (3) (12) (13) the State of Kansas has not only conditioned these rights, but expressly prohibited them and made their exercise a criminal offense. In this setting we think it is the inherent prohibitions of the statute standing alone which impose the unconstitutional restraint, and goes against whom the statute is plainly directed should not be required to abide the processes of criminal justice in order to obtain the redress to which they are entitled under the Federal Constitution."

In Carpenters' Union v. Citizens Committee it is said:

"* * * Every man has a right to full freedom in the dis-
170 posal of his labor, according to his will, and workmen have a right to organize for the purpose of promoting their common

welfare by lawful means. They may impose any condition of their employment which they may regard as beneficial to them, and, if not bound by contract, may abandon their employment at any time, either singly or in a body, with or without cause."

I want to explain what is meant by "bound by contract." They may quit, even if they are under contract, but in so doing subject themselves to damages that may flow from a breach of contract if approved.

In Alabama State Federation of Labor v. McAdory, a case which it was my privilege to have tried and argued, the Court said this:

"And we think it is well settled that the members of a labor organization—that is, workmen who are not bound by contracts for a definite period and have not, by agreement freely made, given up such rights—may, without liability, abandon their employment at any time, either singly or in a body, as a means of compelling or attempting to compel, their employers to accede to demands for better terms and conditions. * * *

"* * * We are persuaded, also, that that part of Section 13 of the Act, making it unlawful to strike except when it is
171 authorized by the vote of the majority of the regular employees working in the business, plant, or in such unit thereof, expressed by a secret ballot, cannot be sustained. As we have previously noted, each individual employee has a right to strike for a legally justifiable purpose, and such a right, of course, rests upon a minority as well as upon a majority * * *."

In the light of the injunction issued in this case could any group of miners meet in any hall, or any other public place where they desired to meet, and take a vote, or discuss the question of quitting their employment, and quitting as the result of that, and then not subject themselves to a violation of that injunction?

As I read it, they could not do that. They would be, then, because every person—all and every person is enjoined—all and every person is enjoined from doing that very thing. That would be not only encouragement, but it would be immediate action.

Now, then, here is the Henderson case, here is a Florida case where an injunction was issued against persons from striking or interfering with a cessation of work, and the Court said:

"We are not advised of any rule of law under which any man in this country will be forced to serve with his labor any other
172 man whom he does not wish to serve.

"Section 19 of the Bill of Rights of our Constitution provides:

"'Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party has been duly convicted, shall ever be allowed in this State.'

"If the injunctive order be construed to mean that the officers and members of the Longshoremen's Association, Local No. 1416, were thereby required to load or unload the trucks of 'Collins', although there was no contractual relation between the local and Collins, then such construction would violate the constitutional privilege provision above referred to. We think it will not be contended that any member of the local could be committed to jail for refusing to load or unload the 'Collins' trucks. That service requires the performance of manual labor, and it is beyond the power of Courts to punish one by imprisonment for failure to engage in involuntary servitude."

We have a host of cases here, if the Court please, that holds that a man's right to work or not to work is a constitutionally guaranteed right.

173 Now, then, as I read the decree again, again I say that it commanded these persons, individually—it does not only command Lewis to do a certain thing, it commands them to refrain from doing certain things. I do not want to be misunderstood. The miners have as much respect for Government as any one representing the Government. The miners have as much respect for the Courts as any other citizen of the land. The miners do not want to violate decrees, but the miners also want the same constitutional privileges and rights as are accorded every other citizen with respect to freedom of speech, with respect to freedom of assemblage, with respect to freedom of the press, and with respect to being freed from involuntary servitude.

It may be true, if the Court please, that some men in connection with this injunction may have to be punished, fined, or sent to jail. Those are incidents that have happened from time immemorial when men, in John Milton's time, propagandized for freedom of the press and freedom of action, men have always set themselves up, and on the one hand there may be the question of having to go to prison, and on the other the right for the preservation of constitutional rights.

Now, then, we do not by any means intend disrespect to this Court. We do not want to defy this Court, and in saying what I say I make no threat, and I intend no disrespect, but the miners must, as

174 well as every worker must, stand upon his right to work or not to work, when he sees fit; and not to work in furtherance of grievances; and, if compelled to do so, I say, is subjected to involuntary servitude and they must stand upon their rights, regardless of the consequence.

If the Government is desirous of making men work against their will there is a method of testing that issue in the land. If the Government wants to test it out let them submit to the people of the United Sates the issue of whether or not men—whether or not legislation should be enacted, and I think there would have to be a constitutional provision to deprive them of the right to exercise their judgment in the matter of quitting work.

The COURT. Mr. Padway, the Court is not going to stop you, but the Court thinks that almost your entire argument is beside the point, sir.

Mr. PADWAY. Well, my answer to that is, not always, but sometimes.

The COURT. As the Court said before, the practical situation was simply to maintain the status quo until the matter could be adjudicated in the proper legal manner.

Mr. PADWAY. My contention——

The COURT (interposing). There was——

175 Mr. PADWAY (continuing). Is that the sort of order that was issued in this case——

The COURT (interposing). There was no order, either directly or indirectly, and nobody could construe anything the Court has said as an order to the individual miner that he could not work or could work.

Mr. PADWAY. Let us go a little further, to the group of miners, that they could work or not work——

The Court (interposing). There wasn't any order to them that they could not quit——

Mr. Padway. Well, then, I cannot see that there is anything left to this case.

The Court. The bill of complaint states, and it has not been contradicted, that by long practice when the president of the United Mine Workers publicly announced that no contract exists, the miners stopped working.

Now, the question was whether a contract existed or did not exist. The Government claimed that the contract was in existence; the miners stated that it was not in existence; and the Court's order was that the notice should be rescinded, or what amounted to the notice should be rescinded, so that the matter could remain in status quo until there should be a judicial determination as to whether or not the contract existed.

Now, that is all there is in the case insofar as the restraining order is concerned.

Mr. Padway. Well, if that is all there is in the case I can assume for the moment that what the miners did with respect to quitting work was lawful and proper.

The Court. Well, the miners are not in this case, sir.

Mr. Padway. They are by the injunctive decree.

The Court. The Court does not agree with you.

Mr. Padway. Well, is Mr. Lewis then alone in this case?

The Court. No; the United Mine Workers, an unincorporated institution, whatever that may be, is in it.

Mr. Padway. They must act through individuals, if the Court please.

An unincorporated organization is composed wholly of individuals, and whatever is enjoined on Mr. Lewis to do, each miner is enjoined upon to do.

Now, if the order does not mean what I say it means, then I can only say to this Court in conclusion that we have violated nothing and there is no basis for the contempt, the proceeding should be dismissed and we should go forth free from these proceedings.

The Court. Now, is there anything further that the defendants desire to say concerning their motion?

Mr. Higgins. This should be said to Your Honor. The points that Mr. Padway has discussed are primarily incorporated in what would be known as Points 1 and 5 of the Motion to Vacate.

There is also in that motion Points No. 2, 3, and 4 that we respectfully submit to the Court are good, are worthy, and will stand up upon examination, but in light of the length of the argument here and the Court's indulgence, we should like, sir, to rely upon our brief in support of Points 2, 3, and 4 without oral argument at this time; except to say to Your Honor that if in the event the Government raises points to which rebuttal should be addressed, we would respectfully ask the right of rebuttal including those points.

The Court. You have that privilege, of course.

Now, Gentlemen, the Court thinks that we should adjourn at this time until Friday morning at 10 o'clock, at which time the Court will hear the Government on this motion to vacate the order.

Mr. Sackett. The Government, of course, Your Honor, will be entirely agreeable to whatever the Court's convenience is; however,

it would seem to us in the public interest, in light of numerous misstatements, unintentional, I will concede, or assume, that it would be in the public interest for the Government to have an opportunity to state its position briefly.

In so doing, I think I can state our position in less than a half hour and I think it would be helpful if that could be done.

On the other hand, if Your Honor thinks otherwise, we are perfectly content with Your Honor's decision.

The COURT. Well, do you mean that that is all the argument that you want to make?

Mr. SONNETT. At this time, sir; yes.

The COURT. You will want to make further argument on Friday morning, as I understand it?

Mr. SONNETT. I would hope that Your Honor would set the matter down for the reception of the Government's evidence on Friday
179 morning to prove the factual issues raised by the motion of the defendants; various factual issues which they have suggested, and we are prepared and will be prepared to present that proof.

We have had our witnesses appear all day today, and they are still here, but we can produce them.

If Your Honor desires the Government to proceed, we can do that.

The COURT. I have no objection to your making your argument now. I think that to make your argument on Friday morning when everybody has been refreshed, would be better practice, but I will hear you if you insist upon it.

Mr. SONNETT. Well, I will undertake, Your Honor, to finish very briefly, because I do not think at this time that any extended discussion of the Government's position is necessary. I do think that some discussion of it would be advisable.

If I may have the Court's permission, I would proceed with the hope of doing so very briefly.

The COURT. All right, sir, proceed.

Argument on behalf of the United States

Mr. SONNETT. The United States, if the Court please, by its Attorney General, filed a complaint in this Court under the Federal Declaratory Judgment Act, a statute which, as Your Honor
180 knows, was passed in 1934 and which provided that in cases of controversy between parties a suit could be filed to ask the aid of a court for the determination of a disputed legal question.

In accordance with the provisions of that statute, the United States filed its complaint in this Court and named in the complaint and in the summons which was issued by this Court, two defendants. One was the United Mine Workers of America, an unincorporated association; the second was John L. Lewis individually and as president of that association.

The United Mine Workers being an unincorporated association——

The COURT. How do you differentiate—at this point, how do you differentiate the United Mine Workers of America, an unincorporated institution, and John L. Lewis, president of the United Mine Workers? What is the distinction between those?

Mr. SONNETT. I believe that the law is well settled in this District, if the Court please, that an unincorporated association is suable and may sue similarly to a corporation.

The COURT. Yes.

Mr. SONNETT. And our complaint and our summons named the unincorporated association and our complaint so alleges, intending to and, in fact, and, in law, suing the organization and its president and suing its president, also, as an individual because he has participated in the acts which gave rise to the controversy which the Government——

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The COURT. For the Court's information, how do you distinguish between suing the unincorporated institution and suing the president as president of the unincorporated institution?

It seems to me it is the same thing.

Mr. SONNETT. Substantially so, Your Honor, except that the United Mine Workers of America, perhaps, could have acted initially when they made the Krug-Lewis contract through a vice president.

The COURT. Could what?

Mr. SONNETT. They could have acted, perhaps, through a vice president; that is, the union.

But the fact is, as our complaint shows, the contract between Krug and Lewis was signed by Krug for the United States on the one hand and by the defendant Lewis as president of the United Mine Workers for it on the other hand.

Accordingly, he was named both as president of the union and as an individual.

The COURT. Now, is it the Government's contention that if this restraining order should be upheld, that there would be a verdict against Lewis as president of the United Mine Workers, an unincorporated institution, and also against United Mine Workers?

182

Mr. SONNETT. It would be my view, Your Honor, without having given it any extended——

The COURT. It is a matter of some importance.

Mr. SONNETT. Yes, it is, sir. But I would regard it in this posture; that the verdict would determine whether John L. Lewis individually and whether John L. Lewis as president of the United Mine Workers and whether the United Mine Workers of America, the organization, through John L. Lewis, have committed contempt of the Court.

The COURT. Well, you have not answered me, but that is all right. Go ahead.

We are just where we started, but go ahead.

Mr. SONNETT. The United States sought, if the Court please, under the provisions of the Federal Declaratory Judgment Act to obtain a declaration by a court of the United States and a determination of a disputed legal controversy which existed between the union on the one hand and the Government of the United States on the other. The case is not in any real sense a labor dispute. The problem which was placed before this Court in our complaint was that we have the aid a court to determine what the legal construction—the proper legal construction—of the Krug-Lewis Agreement was.

For that purpose we came into court.

We alleged in the complaint—and I don't think it is seriously disputed—that after the Secretary of the Interior, pursuant to Executive Order, which I would like to refer to briefly, as I have a certified copy here—after the Secretary of the Inferior took possession of the mines at the direction of the President, he did certain things. I will come to those in a moment.

But may I refer at this time to the findings by the President upon which he directed, pursuant to law, that these mines be seized.

He said:

"Whereas, after investigation, I find and proclaim that there are interruptions or threatened interruptions in the operation of the mines producing bituminous coal as a result of existing or threatened strikes and other labor disturbances"——

That much has been read already, if the Court please. But he went on to say:

"That the coal produced by such mines is required for the war effort and is indispensable for the continued operation of the national economy during the transition from war to peace that the war effort will be unduly impeded or delayed by such interruptions, and that the exercise hereinafter specified of the powers vested in me, is necessary to insure the operations of such mines in the interest of the war effort and to preserve the national economic structure in the present emergency.

"Now, therefore, under the powers vested in me, by the Constitution and laws of the United States, including the Selective Training and Service Act, and as President of the United States and as Commander-in-Chief of the Army and Navy of the United States, it is hereby ordered:" He orders first:

"That the Secretary of the Interior take possession of all the mines"—

And whatever property there was necessary and incidental to the operation of the mines.

He directed, second, that the Secretary of the Interior "shall operate the mines in accordance with such terms and conditions of employment as are in effect at the time possession thereof is taken, subject to the provisions of Section 5 of the War Labor Disputes Act."

I will come back to that, if I may, in a moment, Your Honor.

The President further directed that subject to the National Wage and Price Stabilization policies, the Secretary of the Interior was authorized pursuant to the provisions of Section 5 of the War Labor Disputes Act following such negotiations as he may deem necessary with the duly constituted representatives of the employees to apply to the National Wage Stabilization Board for appropriate changes in the terms and conditions of employment for the period of the operation of the mines by the Government.

The order directed also that in carrying out the provisions of the order the Secretary of the Interior might call upon public or private instrumentalities that he should make employment available and provide protection to all employees working in such mines, and to all persons seeking employment as far as they may be needed.

He went on further to say that the Secretary of Interior shall permit the managements of the mines taken under the provisions of this order to continue with their managerial functions to the maximum degree possible consistent with the aims of this order.

It went on further to provide that the Secretary of the Interior was authorized and directed to maintain customary working conditions in the mines and customary procedure for the adjustment of workers' grievances.

It was provided expressly that he, the Secretary of the Interior, "shall recognize the right of the workers to continue their membership in any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted
186 activities for the purpose of collective bargaining or other mutual aid or protection; provided, that such concerted activities do not interfere with the operation of the mines."

That was the Executive Order pursuant to which the mines were taken, and they were taken for what seems to me obviously was a Governmental sovereign function; it was the safety and continued existence of the country, as the President expressly found as a reason for taking the mines in the first place.

After the mines were taken, as our complaint alleges which we filed in this Court, negotiations were had between the Secretary of Interior and the defendant John L. Lewis representing the Mine Workers, and an agreement was made, and that agreement has become known as the Krug-Lewis Agreement.

Now, I realize, Your Honor, that at this time the merits of the basic question which the Government brought to this Court, namely, the construction of the contract, is not presently before Your Honor for decision, but a good deal of talk has been had about it all day and I merely want to say one thing: the Government proposes to prove that shortly after the Krug-Lewis Agreement was signed, the defendant John L. Lewis left the White House with the Secretary of the Interior Krug, and he said before the Fox Movietone cam-
187 eras, the transcripts of which we have, "The contract has just been executed in the White House governing the national bituminous coal industry. It settled for the period of Governmental operation of the mines all the questions at issue. Instructions are being given the men in the field to return to work immediately."

And then Secretary of the Interior Krug said, "I believe Mr. Lewis will agree with me that it is a contract that is fair to the operators and to the men. It is too bad we did not have it two months ago"; that is, when the work stoppage initially commenced before Government seizure.

There are many other circumstances, if the Court please, which the Government will offer to this Court when the question, the ultimate legal question, is before the Court, but that is why we came into the Court relying on a statute which says that anybody has a right to come into the Federal Court to get the determination of a disputed legal question.

There was a dispute, as our complaint alleges. The defendants asserted on the one hand that they had the right to terminate. The Government said on the other hand, "You don't have the right to terminate."

The Attorney General ruled that they didn't have the right to terminate.

Despite that, a notice of termination was given.

188 The complaint alleges that the mere declaration by the defendant Lewis that there was no contract—and we will prove

beyond a doubt this fact, Your Honor—the mere declaration by the defendant Lewis that there was no contract whether or not he was right or wrong as a master of law, the men would walk out of the mines and that that would cause injury to the people of the United States.

So we sought the aid of a court of equity to hold the matter in abeyance temporarily so that this Court might have a chance to exercise its judicial power so that the Government and the union might have a chance to have the ultimate legal question settled in an American way, by an American court, in open court.

The injunctive relief about which counsel has made so much controversy today was intended only as an aid to the effective exercise of this Court's jurisdiction. It was temporary only. It was not aimed at the miners in any construction or alleged construction that it was false. It was carefully aimed at the defendants in this case, and anybody who might assist them to destroy the status quo, until the Court could pass upon the subject.

Now, I think there has been a concerted attempt, Your Honor, to confuse the minds of some people on that subject, and I think that the misunderstanding and confusion that has existed in some minds about the exact nature of these proceedings, I hope has been
189 cleared up somewhat today and will be further clarified.

The papers are not difficult to understand. Counsel cannot sincerely have the difficulty in interpretation which he professes to have. They are in simple English language.

And let me make it explicit, Your Honor. The Government was interested, as Your Honor well knows and set forth in his order, merely in mainfaining the status quo; that is, to prevent this verbal act, this assertion that there was no contract which would drive and did drive the miners out of the mines.

190 Now, there is a good deal of talk here today about the legal issues involved.

I merely want to indicate our position on three legal issues, Your Honor; because I think, despite all the oratory and eloquence, that on each of those three legal issues, the Government has a solid foundation of decisions of the Supreme Court of the United States squarely in point.

Let me come to the first. Our first contention is that whether or not the Norris-LaGuardia Act applies to the proceeding, the papers charge a contempt of court, the defendants have committed a contempt of court; they are committing a contempt of court, and they will continue unless restrained to commit a contempt of court.

The case directly in point which counsel has not even undertaken, Your Honor, to distinguish—because it cannot be distinguished—is United States against Shipp, in 203 U. S.

I know that Your Honor is familiar with that case, but let me just read briefly one sentence from it.

The Supreme Court by Mr. Justice Holmes, who was certainly an ardent judicial guardian of civil liberties—the Supreme Court speaking through that great judge, said:

"If this Court had no jurisdiction of the appeal, this Court and this Court alone could decide that such was the law. It and it alone
191 necessarily had jurisdiction to decide whether the case was

properly before it. On that question, at least, it was its duty to permit argument and to take the time required for such consideration as it might need. Until its judgment declining jurisdiction should be announced, it had authority from the necessity of the case to make orders to preserve the existing conditions and the subject of the petition."

The power involved, if the Court please, which counsel seems to have disregarded all day long, is the power under our Constitution given to our Courts to determine controversies, and that power was the power which the Government sought here to invoke. It is nothing novel. There are no sinister implications in it. That is what the Courts are for. That is why we came to court.

We invoked the judicial power given to the courts of the United States by the Constitution, and it is that power which the defendants have violated. It is that power of which they are in contempt, whether or not the Norris-LaGuardia Act applies.

To hold otherwise would be to deny to the courts the opportunity to function in the interests of justice.

The COURT. The Court has stated repeatedly today that the Court agrees with that.

192 Mr. SONNETT. I come to the second point, if the Court please, and that is whether or not the Norris-LaGuardia Act applies.

On that, may I indicate briefly, because we have filed a brief on the subject, that the statements of counsel concerning the application of the Act disregard its factual background, its language, and its legislative history.

Let me touch, for a moment, on its legislative history.

The Senate Committee on the Judiciary, commenting on the definition of terms used in the Act, stated that the Norris-LaGuardia Act was directed against the intolerable practices of employers in coercing their employees.

And, let it be understood, if the Court please, we are not here defending any such practices in the past, in the present, or in the future. That is not the problem, because we don't here have a labor dispute.

The Senate Committee said:

"The main purpose of these definitions is to provide for limiting the injunctive powers of the Federal Courts only in the special type of cases commonly called labor disputes, in which these powers have been notoriously extended beyond the mere exercise of civil authority, and wherein the courts have been converted into policing agencies devoted in the guise of conserving peace, for the purpose of aiding employers to coerce employees into accepting terms and condi-

193 tions of employment desired by employers. The proposed bill is designed primarily as a practical means of remedying existing evils, and limitations are imposed upon the courts in that class of cases wherein these evils have grown up and become intolerable."

Representative Kerschner, who was a member of the House Committee which reported the bill, said:

"Be it remembered that this bill does not attempt to legislate concerning Government employees. I do not believe that the enactment of this bill into law will take away from the Federal Government any rights which it has under existing law to seek and obtain injunctive relief where the same is necessary for the functioning of the Government."

Representative LaGuardia said:

"I do not see how in any possible way the United States can be brought in under the provisions of the bill."

Representative Kerschner further stated:

"This deals with labor disputes between individuals; not where the Government is involved. It is my notion that under this bill the Government can function with an injunction if that is necessary in order to carry out the purposes of the Government."

194 Certainly this much is clear: At the worst—at the worst—the question of the application of the Norris-LaGuardia Act to this case is doubtful. The Government does not think there is any question about it on the basis of the factual background of the Act, on the basis of its language, or on the basis of its legislative history.

But that, as Your Honor well knows, is what Courts are for.

But what happened when the restraining order was served? Nothing. The defendants did not advise the Government of any intention to comply or disregard; and incidentally, the order was issued, Your Honor will recall, before the effective date, of the so-called Lewis termination notice.

What happened? Did they come into court affirmatively to vacate it and to put that question before this court for decision?

No.

For the first time, so far as I am aware in this case, when they have come into the court affirmatively is today, and that is when they have this motion filed which is before the Court for consideration along with the motion for temporary injunction by the Government and for punishing these defendants for contempt.

I come now, Your Honor, to the last of the Government's three major legal points, suggested by the argument of counsel for the defendants.

195 Counsel for the defendants spent a great deal of time in trying to demonstrate that there was here some denial of constitutional rights. I am content, Your Honor, for the Government, to rest our position on the statements again of that great judicial guardian of civil liberties, Mr. Justice Holmes, in the case that counsel started to refer to but didn't finish.

I would like to quote what Mr. Justice Holmes said, and it is directly applicable here because there isn't any question of free speech involved here.

He said in the Schenck case, and I quote:

"We admit that in many places and in ordinary times the defendants in saying all that was said in the circular would have been within their constitutional rights, but the character of every act depends on the circumstances in which it is done. The most stringent protection of free speech would not protect a man in falsely shouting "fire" in a theater and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force."

And Mr. Justice Holmes cited Gompers against Buck Stove & Range Company, a case, Your Honor, where an injunction was issued—

196 in a labor dispute, not a case like this—in a labor dispute where an injunction was issued to prevent the utterance of words which would have the effect of force.

And Mr. Justice Holmes, who certainly has been admired and revered by the bench and bar for his attitude on civil liberties, said—with approval—and citing that case:

"It does not even protect a man"—that is, his constitutional right of free speech—"from an injunction against uttering words that may have all the effect of force."

The Government is prepared to prove, Your Honor, that the words here in the notice of termination issued or alleged termination issued by the defendant Lewis had all the effect of force.

The plaintiff has that proof and will produce that proof.

There is no question about it whatsoever.

I submit there is no question whatsoever of freedom of speech involved. Whatever counsel has said on it I will say charitably is because of a misunderstanding of the issue, but on the basis of Mr. Justice Holmes and the Supreme Court, it is clear that there is no such issue.

We request Your Honor that the motion for a temporary injunction and the proceeding to punish these defendants for contempt be set down for trial before this Court on Friday morning. We will be ready at that time to prove before Your Honor by witnesses in open
197 court in the American way everything that I have asserted.

We need not rest and the Court need not rest upon my statements. Issues of fact have sought to be raised; we will resolve them.

Accordingly we request——

The COURT. Well, don't you think if a jury is to be used in the case, that it is necessary for the Court to pass upon whether or not the Norris-LaGuardia Act is involved here before the jury is empaneled?

Mr. SONNETT. Well, if the Court please, if Your Honor would desire an expresison of the Government's views——

The COURT. My own view about it is this—my own view about it is this; If the Norris-LaGuardia Act is involved, a jury will have to be empaneled unless it is waived by the defendants.

My view also is that if the Norris-LaGuardia Act is not involved, that the calling of an advisory jury is simply almost nonsense, because ninety-nine and forty-four one-hundredths percent of this issue are legal questions and not questions of fact, and to have a jury in here and have to send them out every five minutes while we discuss the legal questions, it seems to me would interfere seriously with the proper consideration of this case.

Now, if the case is a Norris-LaGuardia case, we have got to have a jury unless the defendants waive it.

198 Mr. SONNETT. If Your Honor please, whatever Your Honor's decision on that point is entirely satisfactory to the Government. We do not press the use of a jury. Our thought was that if the defendants wanted one, they could have one, because it is not our intention to deny them any single possible right in the determination of this matter.

We have tried to be, and I think we have been——

The COURT. Now, I want to ask you again, isn't it necessary for the Court to determine whether or not the Norris-LaGuardia Act is in this case before we can proceed with the trial?

Mr. SONNETT. I think such a determination, Your Honor, would be entirely appropriate and would simplify the future proceedings.

So I would request that Your Honor make such a determination at this time or prior, I should say, to the date set for hearing.

The COURT. Prior to the what?

Mr. SONNETT. Prior to whatever date Your Honor sets for hearing.

Obviously, whatever date Your Honor sets for hearing on the temporary injunction and the contempt proceedings will have to be far enough away to give Your Honor time to give such further
199 consideration to the question as Your Honor desires.

The COURT. Well, it seems to me that what we should do on Friday morning is to take such further proceedings as counsel on both sides think are necessary in order to determine whether the Norris-La-Guardia Act applies, and after that is done, the Court should determine whether or not it does apply.

If it does apply, a jury will have to be called unless it is waived. If it does not apply, the Court thinks a jury is just nonsense in this case. That is what the Court thinks about it.

Almost the whole case is a matter of law.

Mr. SONNETT. The Government is entirely agreeable to that, Your Honor.

The COURT. All right, gentlemen, that will be the Court's procedure. We will adjourn at this time until Friday morning at ten o'clock.

(Whereupon, at 4:40 o'clock p. m., an adjournment was taken until Friday, November 29, 1946, at 10 o'clock a. m.)

Reporter's certificate

I, Orlo H. Frost, one of the official reporters for the District Court of the United States for the District of Columbia, do hereby
200 certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled action on Wednesday, November 27, 1946.

O. H. FROST,
Official Reporter.

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201 In the District Court of the United States

For the District of Columbia

Holding a Motions Court

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

vs.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

WASHINGTON, D. C., *November 29, 1946.*

The above-entitled cause came on for further hearing on a rule to show cause why the defendants should not be adjudged in contempt of court, before Hon. T. ALAN GOLDSBOROUGH, Associate Justice, at 10 o'clock, a. m.

Appearances:

On behalf of the Government: JOHN F. SONNETT, Assistant Attorney General; JOHN FORD BAECHER, Special Assistant to the Attorney

General; JOSEPH M. FRIEDMAN, Special Assistant to the Attor-
202 ney General; J. FRANCIS HAYDEN, Special Assistant to the Attorney General; ROBERT L. WERNER, Special Assistant to the Attorney General; GEORGE MORRIS FAY, United States Attorney, District of Columbia.

On behalf of the Defendants: WELLY K. HOPKINS, 900 15th Street NW.; EDMUND BURKE, Springfield, Illinois; T. C. TOWNSEND, Charleston, West Virginia; HARRISON COMBS, 900 15th Street NW.; JOSEPH A. PADWAY, 738 Bowen Building; HENRY KAISER, 736 Bowen Building; JAMES A. GLENN, 736 Bowen Building.

203 PROCEEDINGS

The COURT. Gentlemen, On Wednesday the defendants did not argue their points No. 2, 3, and 4 on the motion to discharge and vacate the rule to show cause.

Now, the Court would like to hear the defendants on those three objections.

Mr. HOPKINS. The Court would like to hear the defendants on those?

The COURT. Yes, sir.

Mr. HOPKINS. Very well, Your Honor, but prior to that time, with Your Honor's indulgence, the defendants would like to file their answer to the motion for a preliminary injunction which has not yet been filed, and I would like to pass one to the clerk and one to the Government counsel.

If the Court will indulge us just a few moments, there were some questions as to whether or not we had present with us this morning the authorities, that is, the actual volumes upon which the argument would be predicated.

The COURT. The Supreme Court cases and the Federal Reporter cases you can get from my chambers if you wish.

Mr. HOPKINS. Thank you, sir. That was one of the points that was bothering us at the moment.

Mr. PADWAY. Are they in your chambers, Your Honor?

The COURT. Yes, sir.

204 Mr. PADWAY. Would you have any objection to counsel going in there while another counsel proceeds with argument, and another counsel go into your chambers—How about that, Welly?

The COURT. All right.

Mr. HOPKINS. That is entirely all right.

Mr. PADWAY. Suppose you do that, then, gentlemen.

(Counsel thereupon left the room.)

Mr. HOPKINS. Your Honor, we had planned, as was suggested to the Court on Wednesday, on the allocation of various phases on different points, Mr. Edmund Burke, of Springfield, Illinois, one of the attorneys representing defendants, with your permission, will address himself to point 4.

Mr. T. C. Townsend, of Charleston, West Virginia, has covered points 2 and 3 and he is the gentleman now making use, with your indulgence, of your library.

Mr. Edmund Burke will address the Court now on point 4.

The COURT. I will be very glad to hear you, sir.

Argument on Behalf of Defendants on Point 4

Mr. Burke. Point 4, if the Court please, is that the objection in support of the motion to vacate and discharge the rule is that the objects of the petition for the rule to show cause, the necessary objects of it, are punitive, not compensatory.

Now, if the Court please, the prosecution in this case has evidently elected to proceed here on the theory that this is a civil contempt proceeding and, in accordance with that election, they have filed the petition for the rule to show cause and entitled it in the original and principal cause. The petition is presented in the name of the United States, plaintiff. The prayer of the petition asks—specifies no form of relief asked for; whether it is to be punitive relief or remedial relief granted to promote the remedy sought by the plaintiff in the original complaint.

Now, if the Court please, the question arises here whether or not under the circumstances shown on the face of the complaint in this case, the United States, having averred no private proprietary, pecuniary interest, alleging no property rights that is sought to be safeguarded by this contempt procedure, has a right to maintain it at all.

Now, if the United States had some proprietary interest or right, there would be no question, perhaps, about its right to proceed in the form it has elected to proceed in. But, if the proceeding is punitive, if the Court is to proceed and plaintiff desires the Court to proceed on the theory that the contempt proceeding is punitive, then they have not complied with the rule promulgated by the Supreme Court with reference to the institution of criminal contempt proceedings.

A criminal contempt proceeding, if the Court please, is between the Court and the contemnor, or relator. The plaintiff is not concerned with the criminal contempt proceeding.

The criminal contempt proceedings or, for that matter, a civil contempt proceeding, is used to punish in one instance an affront to the dignity of the Court.

That is the criminal contempt, and in the other, to compensate—either compensate the plaintiff for violation of some lawful order made by the Court, or to protect his private property rights and interests. That is the purpose of a civil contempt proceeding.

The Court. At this point, in order to get your argument for that reason alone—for that purpose alone—I call your attention to the fact that the restraining order asked for is not for the purpose of punishing the defendants under Section 6 of the Smith-Connally Act, but for the purpose of giving the Court an opportunity to decide on whether or not the contract between the Federal Government and the Union had expired.

Now, proceed, sir. I just wanted to give you that thought.

Mr. Burke. Then, as we understand it, this is not a punitive proceeding at all.

The Court. It is exactly what I have said it was, sir.

Mr. Burke. Now, if the Court please, a case in 94 Fed. 2d—I have not that language here—a claim case, I think we have that cited in a brief, if the Court please. I did not expect to argue this question this morning, and I beg the Court's pardon for not being entirely prepared to proceed.

The COURT. Take your own time, sir.

Mr. BURKE. That is 94 Fed. 2d, page 862. I have somewhere a memorandum pertaining to the course of that case, but here was the substance of it, just from memory.

The Federal Trade Commission obtained from the Circuit Court of Appeals of the Seventh Circuit a cease and desist order in connection with some of the activities of the Federal Trade Commission, an agency, of course, of the United States, and exercising the powers of the United States.

In that case they proceeded by way of civil contempt—as the case proceeded in the Circuit Court of Appeals, the Court concluded that the Federal Trade Commission, being a mere agency of the Government, and having no private right or interest whatever in the subject matter of the controversy, could not maintain a civil contempt proceeding. The prosecution then undertook to change the character of the proceeding by arguing that it was a criminal contempt proceeding, and the Court very promptly disposed of that by saying that the contemnor, the relator, had a right to know then and there at the very inception of the proceeding what the nature of the proceeding against him was.

The COURT. That is true in any case.

Mr. BURKE. Yes; that is true.

208 And the Court said further that, there being no facts in that case that made the Court feel that it should proceed on its own motion or proceed by way of criminal contempt, that is, in a proceeding between the Court and the contemnors, that the matter would be dismissed.

Now, that, if the Court please, is our contention here; that if the Government is prosecuting its case in its proprietary capacity, on the face of the proceeding, that very contention is overcome because it is shown by exhibits attached to the complaint and by the complaint itself that there is no private interest whatever of a sort that it is appropriate to protect in a civil contempt proceeding.

209 Now, that is the difference between the two proceedings, as we understand it.

The COURT. But if you know the exact difference between civil contempt and criminal contempt, you are the only person in the United States who does.

Mr. BURKE. I think, if the Court please, that that confusion between civil contempt and criminal contempt has been very largely cleared up by the recent ruling of the Supreme Court, which clearly makes a distinction. The distinction is this: One is a case between the Court and the relator; the other is a case between the plaintiff and the relator. The Court very clearly clears up that confusion by directing that in the case of criminal contempt the Court shall institute it by notice; in other words, the Court does it. The Court may even direct counsel—special counsel of its own selection or the United States Attorney or anyone else. He may, if he wishes, select a representative of the plaintiff and direct him to prosecute the case in behalf of the Court. Then you have, under the rules of the Supreme Court, for the first time, a criminal-contempt proceeding, if the Court please. Any other contempt proceeding is necessarily under that rule established by the Supreme Court a civil-contempt proceeding.

We maintain, if the Court please, that the Government has no
210 such standing on the facts shown here as to entitle it to maintain a civil-contempt proceeding at all. That is the reason why that No. 4, if the Court please, was put in there.

Now, if the Court please, here is a case in the Circuit Court of Appeals for the Eighth Circuit, Merchants' Stock and Grain Company v. Board of Trade of City of Chicago.

"Contempts prosecuted to preserve the power and vindicate the dignity of the courts, and to punish for disobedience of their orders, are criminal and punitive in their nature, the Government, the courts, and the people being interested in their prosecution; while those instituted to preserve and enforce the rights of private parties to suits, and to compel obedience to orders and decrees made to enforce such rights, and to administer the remedies to which the Court has found the parties to be entitled, are civil and remedial and coercive in their nature, the parties chiefly interested in their conduct and prosecution being the individuals whose rights and remedies they are instituted to protect and enforce."

If the Court please, that is a fair statement, I think, of the difference between a civil proceeding and a criminal proceeding in contempt. In other words, if the Government here has not disclosed by its pleadings, has not disclosed by the complaint and the exhibits attached to the complaint, such a private interest or right—proprietary interest or
211 right—that the court of equity has jurisdiction to protect, then this is not the place for a civil contempt proceeding.

Thank you.

Mr. HOPKINS. With the Court's indulgence, we will see if the other authorities have been obtained by Mr. Townsend. If so, we will undertake to proceed just as quickly as he can be brought in from chambers.

The COURT. Very well.

Mr. HOPKINS. With the Court's indulgence, I will determine that.

(After a time Mr. Townsend entered the courtroom, and the following occurred:)

Mr. TOWNSEND. If the Court please——

The COURT. Proceed, sir.

Mr. TOWNSEND. I think the brief filed—the memorandum filed—by the defendants in this case is sufficient with reference to point 2. I am not prepared to discuss point 2 at any great length, if at all.

With reference to point 3—your Honor has it before him, I assume——

The COURT. Yes, sir.

Mr. TOWNSEND. I take the position—and I use the word "I" because others may differ from me—that we are dealing here with criminal contempt, not with civil contempt.

Inasmuch as it is a criminal contempt, all the strict rules of criminal procedure apply.

212 In the case of Michaelson v. United States, found in 266 U. S. 66, the Supreme Court of the United States said this:

"In criminal contempt, as in criminal cases, the presumption of innocence obtains. Proof of guilt must be beyond reasonable doubt."

The COURT. Suppose the defendant comes in and pleads guilty.

Mr. TOWNSEND. How is that?

The COURT. Suppose the defendant comes in and pleads guilty.

Mr. TOWNSEND. This defendant is not going to do that, as I understand it.

The COURT. He did it before you came to town—that is, provided that the Norris-LaGuardia Act does not apply.

Mr. TOWNSEND. If your Honor please, there has never been any plea entered, as I understand it.

The COURT. No; counsel for the defendant arose and said that the defendant admitted he had not complied with the Court's order. That is what I mean.

Mr. TOWNSEND. Well, I did not understand it that way, your Honor.

The COURT. Well, that is the fact.

Mr. TOWNSEND. I didn't understand that that was any plea of guilty on the part of the defendant.

213 The COURT. No, no; it is a plea of guilty under certain circumstances. It is a plea of noncompliance with the Court's order, which would be guilt, possibly, certainly if the Norris-LaGuardia Act does not apply.

I am just asking if that changes your view about what the Court said in that case.

Mr. TOWNSEND. As I understand this situation as it is now presented to this Court, we are discussing the motion to dismiss and discharge the rule.

The COURT. Yes.

Mr. TOWNSEND. Now, when the Court passes upon that, if the Court should overrule that motion, then, as I understand the procedure in criminal contempt, the defendant will then plead not guilty.

The COURT. But, you see, the——

Mr. TOWNSEND. And then, upon his not-guilty plea, the Government will have to make its case.

The COURT. The Court is not now passing upon, or has not passed yet upon, the question whether there is any technical criminal contempt, or civil contempt either, insofar as we have proceeded in this case.

But before this motion was filed—the motion was filed—the motion was filed on November 26—now, as I remember it, on the first day of this hearing Mr. Hopkins stating that he represented all the

214 defendants, admitted for the record that the order of the Court had not been complied with.

Now, the question is whether after that admission is in the record, a motion subsequently to that, and certain procedural rules which would apply in a criminal-contempt proceeding had not been complied with—whether the motion is inappropriate in view of the admission.

Mr. TOWNSEND. Well, here is the exact language Mr. Hopkins used:

"The defendants, and each of them, deny the jurisdiction of this honorable Court to have issued the temporary restraining order and rule to show cause issued thereon. They will be prepared to present arguments on these questions on November 27, the time fixed by the Court, as we understand it, for hearing this case."

The COURT. That is not all he said, sir.

Mr. TOWNSEND. Well, that is the only thing I have here, sir.

The COURT. He made the categorical statement that no action then had been taken by the defendant to carry out the order of the Court.

Mr. TOWNSEND. Well, even at that, assuming that that had been admitted, which I do not assume, because I do not remember it, Your Honor——

The COURT. Maybe you were not here; I do not remember that you were——

215 Mr. TOWNSEND. Yes, I have been here all along since the case started.

The COURT. All right.

Mr. TOWNSEND. But assuming that that is true, the defendant has the right, I think, yet to enter a plea of not guilty. He has not pled his guilt.

May I go ahead?

216 The COURT. Of course; yes, sir.

Mr. TOWNSEND. I had just finished reading what the Supreme Court laid down as the rule with reference to criminal contempts, and under this decision, and in fact under the decisions of all courts that have dealt with this question of criminal contempt, the burden is upon the Government to establish the guilt of the accused beyond all reasonable doubt.

In view of that declaration in the Michaelson case, and in view of the recognized criminal procedure and the measure of proof that is required in criminal contempt cases, I want to refer to the Government's rule and the petition filed upon which the rule is based, and to Mr. Collisson's affidavit.

You can take this rule and the petition of the Attorney General and the Collisson affidavit and hold them up by the four corners and examine them with a magnifying glass and you cannot find any charge contained in the rule or in the petition or in the affidavit except upon information and belief.

The COURT. Let me ask you a question there, sir.

Mr. TOWNSEND. Yes, sir.

The COURT. As I remember the Collisson affidavit, or state-

217 ment—I don't know whether it was sworn to or not, I don't remember—but as I remember, those allegations which were based on information and belief, all those substantial allegations have been admitted, have they not? Isn't that true?

Mr. TOWNSEND. I don't understand, so, Your Honor. We do not admit them.

The COURT. All right, sir. Proceed.

Mr. TOWNSEND. That is not my understanding of it, sir.

The COURT. Proceed.

Mr. TOWNSEND. If this is criminal contempt, and it has every attribute of criminal contempt as that term has been defined by the Supreme Court of the United States in the Ray Grossman case, he cannot be tried upon a statement that contains nothing except belief, that he has information and belief that he has committed a criminal offense, and that is what this is.

It occurs to me, Your Honor, that this may illustrate what I mean. Let's assume the Grand Jury returned an indictment upon information and belief, certainly a defendant couldn't be tried. What is the indictment in this case? The indictment in this case is the rule that was issued against the defendant to show cause, and that rule must be and should be as definite and as certain and charge the

offense that this defendant has admitted with as much particularity as if he were being tried upon an indictment.

I want to give Your Honor the benefit of one other citation, and then I think that is all I have to say,

Chief Justice Taft in the case of Ex Parte Grossman, 267 U. S. 111, used this language with reference to civil and criminal contempts:

"In the Gompers case the Court points out that it is not the fact of punishment but rather its character and purpose that makes the difference between the two kinds of contempts. For civil contempts the punishment is remedial and for the benefit of the complainant, and a pardon cannot stop it. For criminal contempts the sentence is punitive in the public interest to vindicate the authority of the court and to deter other like derelictions."

The COURT. Won't you read that again, please? There are just a few words at the beginning that I didn't catch.

Mr. TOWNSEND.

"In the Gompers case the Court points out that it is not the fact of punishment but rather its character and purpose that makes the difference between the two kinds of contempts. For civil contempts the punishment is remedial and for the benefit of the complainant, and a pardon cannot stop it."

The COURT. Who cannot stop it?

Mr. TOWNSEND. A pardon.

The COURT. A pardon, yes.

Mr. TOWNSEND. A pardon cannot stop it.

The COURT. I didn't understand what the word was when you first read it.

Mr. TOWNSEND.

"For criminal contempts the sentence is punitive in the public interest to vindicate the authority of the court and to deter other like derelictions."

Your Honor, this case came up to the Supreme Court of the United States in this way: Under the Constitution of the United States the President is given power to pardon offenses. The Constitution uses the word "offenses."

Grossman had been found guilty of criminal contempt in the City of Chicago. He was sentenced to jail. An application was made to the President for a pardon, and the President pardoned him. Then the question came up to the court as to whether or not the President had power to pardon Grossman, and Chief Justice Taft treats criminal contempts as a crime, and inasmuch as it is a crime that vests power in the President of the United States to pardon.

Everywhere the offense with which we are dealing here today, from authorities that I have examined, I think that this is a question of criminal contempt and criminal contempt only, and that the Government has not made a prima facie case of criminal contempt against this defendant. That is all. Thank you.

Mr. SONNETT. If Your Honor please, the distinction between civil and criminal contempt is, as the Court has pointed out, a difficult one.

Most of the cases I believe which have touched upon the subject have sought to distinguish the two by referring to the purpose and character of the punishment imposed.

In this case I think the simple answer is, since the complainant is the United States, or the people of the United States, that this contempt is both civil and criminal.

So far as the procedural aspects of the matter are concerned we have complied in our papers with the requirements of every possible statute, rule, or case.

I come first to the rules of criminal procedure, Rule 42 of the recent rules approved by the Supreme Court, which provides as to criminal contempt, subparagraph (b), as follows:

"Disposition upon notice and hearing. A Criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice."

Subdivision (a), as the Court will recall, deals with the
221 power of a court to punish summarily for contempts committed in its presence.

Subdivision (b) continues:

"The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and described as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the United States Attorney or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest."

In this case our notice consisted of the petition and supporting affidavit of Captain Collisson, together with this Court's rule to show cause why the defendants should not be punished as and for a contempt, clearly and completely meets the requirements of the rules of criminal procedure.

Secondly, the rule to show cause, as Your Honor pointed out at a previous hearing, is patterned upon the provisions of Section 387 of Title 28 of the Judicial Code which sets forth the procedure to be followed in the ordinary case of punishing criminal contempts.

The Court. I think the Court should say at this point that the reason the Court signed its order under Section 387, which bore upon criminal contempt mentioned in section 386, was under its general equity powers.

222 The Court thought it had a right to adopt that proceeding if it saw fit to do it, irrespective of the language of the statute.

The Court did not mean by passing thereon, at all, that the order was passed under Section 386. The Court was of the opinion then, tentative opinion, that Section 389 is the applicable section, if the Norris-LaGuardia Act does not apply.

Now, proceed.

Mr. Sonnett. The Court's initial order, as Your Honor has just pointed out, although patterned on Section 386, did not and was not required to follow the requirements of that section, because in Section 389 of the Judicial Code it is provided that:

"Nothing in the Judicial Code shall apply to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action or prosecuted in the name of, or on behalf of, the United States, but that such proceeding may be punished in conformity to the usages at law and in equity prevailing on October 15, 191[illegible]

Those requirements the papers have clearly met.

The fact that the same acts in violation of a temporary order restraining the defendants, or a temporary injunction, may constitute at the same time both a civil and criminal contempt, appears clearly from the decisions of the Supreme Court in Gompers against Bucks Stove & Range Company; both cases, the first in 221 U. S., the second in 233 U. S.

The COURT. They are leading cases, I think. Almost all the late cases refer to those cases.

Mr. SONNETT. That is my understanding, Your Honor. It is true, in our opinion, that where the contempt is both civil and criminal, the criminal aspect is dominant and fixes the character of proceeding, at least for procedural purposes, and accordingly, in order that there may be no possible question, the Government was prepared and is prepared to prove the guilt of the defendants beyond a reasonable doubt. It is settled law, if Your Honor please, that no indictment or information is necessary for the trial of a criminal contempt case.

Squarely in point I believe is Jennings vs. The United States in 264 Fed. where the Circuit Court for the Eighth Circuit so held.

The procedure here followed by the United States, we believe, is squarely supported by the decision in Forest vs. The United States in 277 Fed., United States ex rel Brown vs. Lotrer, 140 Fed. (2d), and United States vs. Balaban, 26 Fed. Sup.

224 Those cases indicate clearly that the approved practice in criminal contempt proceedings is for the United States to file a pleading, whether denominated a motion, a petition, or information is immaterial, with supporting affidavits, as a basis for the issuance of a rule to show cause.

The COURT. What do you think of the proposition as to whether or not when this proceeding was originally instituted it was instituted for the purpose of preventing a violation of the criminal law?

The Court's understanding of the petition was that at that time the Government hadn't any interest in Section 6 of the Smith-Connally Act, but was endeavoring only to secure an interpretation of the contract between the Federal Government and the labor union, and that the restraining order was not issued primarily for the purpose of preventing a violation of the criminal law but for the purpose of giving the Court an apportunity to ascertain what a proper interpretation of the contract was between the Federal Government and the labor union.

I should like to have you comment upon that.

Mr. SONNETT. I think Your Honor's summary accurately sets forth the Government's views when it instituted proceeding.

I think, however, that as the matter now stands before the Court on the papers before the Court, the papers in accordance with any 225 requirement of rule, statute, or practice, clearly set forth both a criminal and a civil contempt.

The fact that the act which was restrained might also have been a violation of criminal law, of course, as Your Honor is well aware, does not prevent a court of equity from enjoining that act where the performance would cause irreparable injury.

226 Finally, if the Court please, I think it is apparent from the motion of the defendants that they are fully aware that this

act—action on the part of the Government has given them notice of criminal aspects wholly apart from the civil aspects, and we think we clearly have.

We will be prepared to meet the procedural requirements for both civil and criminal contempts.

Accordingly, it is our view that the grounds of the motion now being argued before the Court, grounds 2, 3, and 4 of the defendants' motion, are without substance.

The COURT. Anything further, gentlemen?

Mr. HOPKINS. If you will pardon us one second, Your Honor.

Mr. Burke wanted to advert to his opening argument and to quote from a given case——

The COURT. You have the right of course. You are the moving party.

Mr. HOPKINS. He merely wants to add the quotation from the McClain case that he did not have before him.

The COURT. Yes.

Mr. BURKE. At the moment, if the Court please, I did not have my memoranda on that case that I used.

The Federal Trade Commission case, a claim case, 94 Fed. 2d 802.

That was a case, if the Court please, where the Federal Trade
227 Commission instituted a civil contempt proceeding in the Circuit Court of Appeals for a violation of a cease and desist order that had been made by the Court at the request of the Commission.

The Court said that "having found that the protection of private rights was emphasized throughout the cases relating to civil contempt proceedings as their principal purpose, we became convinced that the Commission, an agency of the Government representing no private interest of its own, but acting solely in the public interest, having no such standing as a private party that it could utilize procedure intended to safeguard the rights and interests of private parties."

Now, that is our position here, if the Court please. It is not a question of anything but parties.

Had the United States shown or can it show such interest in its complaint, such private interest as is appropriate to be protected by a civil contempt proceeding?

We say not, if the Court please.

Mr. TOWNSEND. May I say just a word, if the Court please, on what has been said by the Assistant Attorney General?

The COURT. Proceed, sir.

Mr. TOWNSEND. With the law entirely clear as to the character of criminal contempt and the authorities prescribing that the technical procedure must apply to criminal contempts to the same extent
228 that it applies to any other crime, we find ourselves now, after the remarks of the Assistant Attorney General—after three days in this court, the Assistant Attorney General openly admits to this Court and to the world that they are prepared to try this defendant on either criminal or civil contempt, going or coming, in the teeth of the law which says, repeatedly, time and again, by eminent authority, that criminal contempt is a crime and the defendant must be charged—properly charged—with having violated some rule or order of the court.

It is not sufficient to say in a criminal case or in criminal pleadings to resort to generalities as this pleading does, and the Attorney General substantially admits that, today he has not advised this defendant whether he is charged with criminal contempt or civil contempt.

And then, here is the rule which we don't think has been complied with at all.

May I refer Your Honor to it?

Rule 42, criminal contempt:

"A criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt, and that it was committed in the actual presence of the court. The order of contempt shall recite the facts and shall be signed by the judge and entered of record.

229 "(b) Disposition upon notice of hearing. A criminal contempt, except as provided in subdivision (a)—"

And that is what I have just read—"of this rule shall be prosecuted upon notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense and shall state the essential facts constituting the criminal contempt charged and describe it as such. Notice shall be given orally by the judge in open court in the presence of the defendant, or on application of the United States Attorney or an attorney appointed by the Court for that purpose by an order to show cause or an order of arrest."

And so forth.

Now, I submit, Your Honor, that this affidavit filed in this case upon which the rule is based and the petition of the Attorney General does not bring this criminal contempt charge within the terms of the rules laid down for the trial of criminal contempts.

Now, in support of this rule, here is a good deal of citation and authority.

The requirement in the second sentence, that the notice "shall describe the criminal contempt as such, is intended to obviate the frequent confusion between criminal and civil contempt proceedings,

230 and follows the suggestion made in McCann versus New York Stock Exchange, 80 Fed. 211 (CCA 2d)."

Now, just what can we do with that rule in view of the status of this case? We cannot ignore it. I don't think we can, at least.

If this is criminal contempt and the Assistant Attorney General does not say that it is not a criminal contempt—if it is criminal contempt, the pleadings do not bring it within this rule laid down by the Government for this court.

Mr. SONNETT. May I in rebuttal, Your Honor, mention just briefly two things.

First: Prior to the hearing before the Court on Wednesday, the defendants served a notice upon the Government, which notice is now the motion being argued before this Court.

Counsel's argument, I think, and most respectively assert, proves too much. Because, the defendants' own motion served the day before the last hearing characterizes this proceeding as one for criminal contempt. Under no possible theory could they have been in any way misled, because Ground 3 of their motion says:

"Observance of all the strict rules of criminal procedure is required to establish criminal contempt."

Ground 4 of their motion says:

"The object of the petition for the rule is necessarily punitive and not compensatory. Accordingly, it being for criminal contempt."

231 And then they argue it should have been presented as an independent proceeding.

Accordingly, it is clear that before this matter came to the Court on the 27th, the defendants, through their counsel, were fully on notice and so characterized this proceeding, themselves, as one for criminal contempt.

Secondly: The purpose of notice, I respectfully submit, is merely to be sure that the defendants, by default, do not ignore any right which they might have during these proceedings as a matter of substance which they would have if it were criminal and not civil.

The Government has stated, and again states, that it has and does intend to see to it that whatever rights the defendants would have under any theory, whether criminal or civil, or both, the defendants should have.

Mr. HOPKINS. Just one additional thought, if it please the Court.

The COURT. Yes.

Mr. HOPKINS. In addition to the thought as presented by Judge Townsend under Rule 42, which defendants respectfully suggest to the Court has not been complied with by Government, and that it is the rule guiding this and all other courts; in answer to Mr. Sonnett just at the moment where he says that the defendants are on notice

that it is criminal contempt, because of the wording in our
232 motion to discharge and vacate the rule, I say, sir, that if his remarks just now are to be interpreted as admitting the efficacy of Point 4 of the motion to discharge and vacate, to wit, that the object for the petition, the rule is necessarily punitive and not compensatory, and accordingly, it being for criminal contempt, petition should have been presented as an independent proceeding and not as supplemental to the original cause—that is quoting our Point 4,

If his remarks, sir, are an admission by Government that that point is well taken, sir, then we respectfully submit this motion should be sustained by Your Honor. Bearing in mind the efficacy and the weight of Rule 42, when it says to Your Honor—and it said to the Government—"that a criminal contempt, except as provided in subsection (a) of this rule, shall be prosecuted on notice. The notice shall state the time and place, allowing a reasonable time for the preparation of the defense."

And now, sir, what else does it say?

It says that that "shall state the essential facts constituting the criminal contempt charged, and describe it as such."

And I challenge the Government to say that they have met that rule.

233 There is nothing, sir, in the petition for the rule, there is nothing in the supporting affidavit for the rule, there is nothing in the rule itself, that complies with that, I submit to Your Honor, because the petition and these alleged supporting affidavits are hearsay that that cannot, sir, meet the requirements of the rule.

And therefore we submit with all due respect, but with all earnestness to you, sir, that upon Point 4 alone this motion to vacate and

discharge is good, and Your Honor, taking cognizance of the Government's own admission here today, that it does not know whether it is civil or criminal, that it is undertaking to proceed on both; it cannot ride two horses in different directions at the same time.

Bearing in mind the strict rules of criminal contempt, this defendant, sir, individually and in his official capacity, and the various multiplied thousands of men who compose the mine workers that are likewise before your court under this rule, are entitled to strict compliance by the sovereign government when it alleges that it moves against 400,000 people in its sovereign capacity.

We say to you, sir, with all earnestness that can be applied to the point, that they are entitled to performance under this rule. It is their right and it is the right and duty of government to meet it, and, not having met it, sir, then we are entitled at your hands, as we see it, that this rule be dismissed, vacated, and discharged, because,
234 if Rule 42 means anything, and if the interpretations under it mean anything, it means just what it says, that it "shall be described as such."
235 The footnote to that requirement in the second sentence, that the notice shall describe the criminal contempt, as such, is intended to obviate the frequent confusion between criminal and civil contempt proceedings.

Sir, the gravity of the charge here more than ever brings into play the efficacy of this rule. It was laid down for the purpose of defending men who are hailed before the bar of justice. We submit to you, sir, with all the earnestness that a man can pour into a subject, that now before your Honor, on the Government's own admission, is an error, and such an error, such an omission, as not only to entitle this Court, but to require it, in the name of justice, in the public interest, sir, that labor and all men may know their rights hereafter, that the rule to vacate and discharge be granted by your Honor.

Adverting again, in support of that statement, let it be again borne in mind that the Supreme Court of the United States has said in the Michaelson case that "Proof of guilt must be beyond reasonable doubt, and the defendant may not be compelled to be a witness against himself."

Yet the Government here this morning says to you, sir, "We do not know whether it is civil contempt, we do not know whether it is criminal contempt, we do not know whether it is blended; we do not know which way we are proceeding."

Therefore, the Government in its alleged sovereign capacity is asking this Court to take a position which is diametrically
236 opposed to the doctrine of the Michaelson case and the rule laid down under Section 42 (b).

Sir, with all the feeling that it is possible to put into the point before your Honor, I say to you now that the public interest, right, and justice require that the Government be required to meet the solemn obligation under these doctrines and these rules well known to it, and we therefore respectfully say to you, sir, that the motion to discharge and vacate upon all five points, but standing upon point 4 alone, in justice and as a matter of right should be sustained and granted by your Honor.

The COURT. Gentlemen, the Court is ready to rule.

It happens that the Court was a Member of Congress at the time the Norris-LaGuardia Act became law and during the debates in the consideration of it. Mr. LaGuardia and I were legislatively always very close. I think I am correct in saying that I supported every measure that he was interested in—I mean primarily interested in—and that he supported every measure that I was primarily interested in. He directed his activities principally toward the labor movement in what he considered the public interest; and mine were directed toward the currency.

As I said before, I am sure he always supported me; and, as far as I remember, I always supported him. So I am sure I am thoroughly familiar with the Norris-LaGuardia Act and its purposes and the reasons for it.

It is notorious that around, I guess, from 1890 on, the Federal courts were used by powerful interests for the purpose of defeating attempts on the part of labor to improve their welfare, increase their wages, improve their living conditions, and to help themselves in various ways.

Now, it takes a long time to arouse the public, sometimes, but the Clayton Act was the first affirmative expression of their resentment of the action of the courts, and the Norris-LaGuardia Act was the
238 culminating expression of their feeling that the courts were entirely in the wrong in the way they issued injunctions in labor disputes.

The Court remembers very distinctly the amendments that were offered by Mr. Beck, I think, of Pennsylvania—and I forget who offered the others—which endeavored expressly to exclude the United States in practically all cases, under all circumstances, from the operation of the Norris-LaGuardia Act. But those in favor of the Act felt that an inclusion—an express inclusion—might defeat the purposes of the Act in a great many cases, and that the Government was amply protected by the general principle where the Government was not specifically mentioned or included by necessary implication in a given case—that the language of the Act did not apply to the Government.

The leading case on that subject in this country—and it is still in force and effect—is the case of the Dollar Savings Bank against the United States, found in 19 Wallace at page 227. In that case the Federal Government brought an action of debt in Pennsylvania to collect a tax. The statutes provided that an ordinary common-law action of debt was not applicable in cases for the collection of taxes. There is a special statute that would ordinarily cover a case of that kind, a special statute for the collection of taxes.

The Federal Government brought an ordinary action for the collection of debt at common law, which the Savings Bank
239 contended was not legal. Here is what the Court said. The Court did not take that view. The Court held that an ordinary action of debt if brought by the United States would lie. This is what the Court said:

"It is a familiar principle that the King is not bound by any Act of Parliament unless he be named therein by special and particular

words. The most general words that can be devised (for example, any person or persons, bodies politic or corporate) affect not him in the least, if they may tend to restrain or diminish any of his rights and interests."

Certain cases are cited.

"He may even take the benefit of any particular Act, though not named. The rule thus settled respecting the British Crown is equally applicable to this Government, and it has been applied frequently in the different States and practically in the Federal courts. It may be considered as settled that so much of the royal prerogative as belonged to the King in his capacity of *parens partiae*, or universal trustee, enters as much into our political state as it does into the principles of the British Constitution."

As I said before, that is the leading case.

But the Court feels that the doctrine is stated with more and greater clearness than anywhere else that the Court has found it in Black on Interpretation of Laws, Second Edition. I am reading from pages 94 and 95.

240 "General words in a statute do not include nor bind the Government by whose authority the statute was enacted, where its sovereignty, rights, prerogatives, or interests are involved. It is bound only by being expressly named or by necessary implication from the terms and purposes of the Act.

"This is a very ancient rule of the English law and is equally applicable to the national and state governments in this country. It is said that laws are supposed to be made for the subjects or citizens of the State, not for the sovereign power. Hence, if the Government is not expressly referred to in a given statute, it is presumed that it was not intended to be affected thereby, and this presumption, in any case where the rights or interests of the State would be involved, can be overcome only by clear and irresistible implications from the statute itself. Generally speaking, therefore, the State is not bound by the provisions of any statute, however generally it may be expressed, by which its sovereignty would be derogated from, or any of its prerogatives, rights, titles, or interests would be divested, save where the Act is specifically made to extend to the State or where the legislative intention in that regard is too plain to be mistaken."

In this case, what society, what the sovereign power, was endeavoring to do was to hold a matter involving the public interest, a
241 matter involving a potential public calamity, by an entity which had been given power by the sovereignty itself, the labor union, from taking the contemplated action, which, as I said before, would amount to a public calamity, until there could be a judicial determination of whether it had the right to take such action.

The Court thinks that undoubtedly under the general rules which the Court has spoken of, the Norris-LaGuardia Act did not and does not apply; and following that opinion on the part of the Court, the Court had the same rights that the Court would have had prior to the passage of the Norris-LaGuardia Act and the Clayton Act.

So it is perfectly clear that prior to the Norris-LaGuardia Act and the Clayton Act, a court of equity had the right to enjoin a labor union which, in the opinion of the Court, was about to do something which was against the public interest, including the ultimate interest of the union itself.

The Court thinks that that opinion substantially disposes of this motion to discharge and vacate the rule to show cause, because under Section 385 of the United States Code Annotated the statement is made:

"The * * * courts shall have power to impose and administer all necessary oaths, and to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority. Such power to punish contempts shall not be construed to extend to any cases
242 except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official actions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person, to any lawful writ, process, order, rule, decree, or command of the said courts."

The Court thinks the defendants were notified by the rule to show cause, in detail, as to what they were charged with having done; and if what they were charged with having done amounted to a criminal contempt, they had notice of the fact that it was a criminal contempt.

Of course, I myself noticed some time ago, several days ago, that part of the rule which requires criminal contempt to be alleged, to be one as such; but in view of the fact that the specific charges were stated in the rule to show cause, and those charges were of a character of which the defendant had notice, if they were criminal, the defendant had notice of the fact that they were criminal; and if it is a mistake not to have charged that the contempt was criminal specifically, it is not sufficient at all to vitiate the proceeding.

In this particular case, under the circumstances it is an omission that could do no one any harm. The Court does not think that the contention that freedom of speech has been violated is a matter for serious consideration. The Court repeats again what the Court
243 said several times on Wednesday: that this proceeding was for the sole purpose of holding the status quo until there could be a judicial determination of the contract between the United States and the United Mineworkers of America. The Court thinks that that must have been thoroughly understood by the union. It was thoroughly understood, certainly, by every other thinking person in the United States who was interested in the matter.

Furthermore, I think the Court should say that it was perfectly evident from the Court's order that what the Court was commanding was that this statement that the contract between the Union and the Government had expired should be rescinded, and that other matter in the order was simply ancillary to that, in order to prevent that particular requirement of the order being evaded.

The motion, gentlemen, to discharge and vacate the rule to show case is overruled.

Mr. SOKATT. The Government is ready to proceed, your Honor. Would you prefer a short recess, or shall we commence?

The COURT. The Court will take a 10-minute recess.

(At this time a short recess was taken. The following then occurred:)

The COURT. Gentlemen, the Court has been in consultation with counsel, and for reasons which the Court thinks are fair and proper, counsel have asked for a recess until half past 2. The Court

244 thinks that the request should be granted, and the Court will now take a recess until 2:30.

(At 11:50 o'clock a. m. the Court recessed until 2:30 p. m. of the same day.)

245 AFTERNOON SESSION

(The hearing was resumed at 2:30 o'clock p. m., pursuant to the taking of the recess.)

The COURT. Gentlemen, is there any matter you desire to take up with me?

Mr. HOPKINS. I didn't hear Your Honor, pardon.

The COURT. Is there any matter you desire to take up with me at this time?

Mr. HOPKINS. Just a second. At this juncture, Your Honor, and in order that the record may be abundantly clear, and in order that no question may hereafter be raised, procedurally or otherwise, as to the position of the several defendants, they now desire, both individually and in official capacity, the organization as such, to respectfully enter before Your Honor on the record a plea of not guilty.

The COURT. I understood that you wanted to raise another question, when you left my chambers this morning.

Mr. HOPKINS. Yes, sir; I would have made that statement, but I had anticipated Your Honor had some statement to make in reference to his own views on that, and then we would have a reply to make to it, sir. I could make it now if Your Honor would prefer.

The COURT. All right.

246 Mr. HOPKINS. Understanding from statements made by Your Honor from the bench, and suggestions made to counsel, that an advisory jury, as such, as set up in Your Honor's rule to show cause, bearing in mind that Your Honor has observed upon that point that such an advisory jury would perhaps prolong the trial of this case, and bearing in mind Your Honor's further observation that the questions involved here will be primarily questions of law, and deferring to Your Honor's observations upon that point, the defendants, in the sincerest desire of expediting this case and reaching a quick resolution of the issues involved, they, and each of them, Your Honor, hereby respectfully waive whatever rights the defendants may have under the law or under the rule to show cause, respecting an advisory jury.

That was the decision, Your Honor, that we sought time, as suggested to you and counsel in chambers, to arrive at, and we now make that statement for the record.

The COURT. And you make no request for an advisory jury?

Mr. HOPKINS. We make no request, Your Honor.

The COURT. Proceed.

Mr. SONNETT. The Marshal will call our first witness, if the Court please.

The MARSHAL. Are there any witnesses in the courtroom? If there are any witnesses in the courtroom, please step forward to the witness room.

247 The CLERK. All witnesses in the case on trial are asked to immediately step forward to the witness room. Thereupon—

NORMAN HARVEY COLLISSON was called as a witness for and on behalf of the Government and, having been first duly sworn, was examined and testified as follows:

The CLERK. State your full name, please.

The WITNESS. Norman Harvey Collisson.

DIRECT EXAMINATION

By Mr. SONNETT:

Q. Captain, what is your occupation?

A. I a—

Mr. HOPKINS. If it please the Court, with all due respect, and in order that the record may be made clear, let the record show that before this witness has responded to any question, other than to the question of his name, to identify himself, defendants and each of them wish to state this objection to the record:

We object to the taking of the testimony of this witness, or any other witness, on the ground that the proceedings adopted by the Government here require a dismissal of these proceedings, and that these proceedings were not in compliance with law.

248 We further object on the ground that these proceedings are not in compliance with the statutes involved and the rules applicable.

We further object to the testimony of this witness, or any other witness, on the ground that the proceedings adopted by the Government here do not sufficiently inform the defendants, or either of them, of the nature of the proceedings against them or either of them; and therefore, to require the defendants, or any of them, under the proceedings adopted by the Government in this case, is prejudicial to the defendants, and each of them, and to their respective rights thereunder.

Clarifying it further, these proceedings are not sufficient to require these defendants to answer these proceedings, and that the proceedings as outlined by the Government and taken here are prejudicial to the defendants' rights, and each of them.

The COURT. Proceed.

Mr. HOPKINS. We will note our exceptions for the record, Your Honor, and we would like to know whether or not this broad objection as now made can be had successively into the record in order to avoid repetition as much as possible; that this broad objection now made may be accepted by the Court as being taken in each instance.

The COURT. You mean that the remarks you have now made
249 you desire not only to apply to this witness but to any other witnesses called by the Government?

Mr. HOPKINS. Yes, Your Honor.

The COURT. There is no reason why that should not be done. Of course the Court thinks that the Court passed on your motion this morning, sir. The Court thinks this is duplication. However, the Court has no objection to your putting it on the record.

Mr. HOPKINS. We thought it well from the viewpoint of the defendants to preserve it on the record.

250 DIRECT EXAMINATION

By Mr. SONNETT:

Q. What is your occupation, Captain?

A. Coal Mines Administrator.

Q. And for how long have you been Coal Mines Administrator?

A. Since October 1, 1946.

Q. What was your occupation prior to that time?

A. I was Deputy Coal Mines Administrator.

Q. During what period of time?

A. From July 20, 1946, to October 1, 1946.

Q. And what was your occupation before that?

A. I was Executive Officer to the Coal Mines Administrator, and prior to that Executive Officer to the Deputy Coal Mines Administrator.

Q. During what period of time?

A. From May 21, 1946, to July 20, 1946.

Q. Will you state, Captain, briefly, what your civilian occupation was before you became a member on active duty in the United States Naval Reserve?

A. I was a power engineer for the American Gas and Electric Service Corporation.

Mr. SONNETT. May I have marked for identification, if the Court please, Government Exhibit No. 1?

251 The COURT. Yes.

Mr. SONNETT. And offer it at the same time in evidence, it being a certified copy of the Executive Order of Seizure of the Mines.

(Thereupon, the document referred to was marked "Government Exhibit No. 1 for identification.")

Mr. HOPKINS. No objection, Your Honor, to the introduction of this.

The COURT. It will be received.

(Thereupon, Government Exhibit No. 1 for identification was received in evidence.)

Mr. SONNETT. If the Court please, without attempting at this time to go into the exhibit in full, may I merely suggest to the Court that this Order is based upon findings by the President that the interruption in coal production was injurious to the war effort and to the national economy, and to submit the Order to Your Honor.

The COURT. All right, sir.

Mr. HOPKINS. Of course, Your Honor, we don't accept that particular excerpt from the exhibit just offered Your Honor as being the entire purpose——

The COURT. Neither does the Court, sir.

Mr. HOPKINS. It is to be read within its four corners and the conclusion drawn by the counsel is not the conclusion drawn by the defendants.

The COURT. You are correct in that, sir.

252 Mr. SONNETT. If Your Honor please, I will ask the Clerk to mark these two documents which I now hand him as "Government Exhibits for identification, 2 and 3."

(Thereupon the documents referred to were marked "Government's Exhibits Nos. 2, 3, and 4 for identification.")

Mr. HOPKINS. I submit, Your Honor——

Mr. SONNETT. I have not offered the documents yet.

Mr. HOPKINS. I beg your pardon. I thought you had offered them.

Mr. PADWAY. Mr. Sonnett, do you want these three considered together?

Mr. SONNETT. If you will, please.

Mr. PADWAY. Mr. Sonnett wants the three considered together.

Mr. SONNETT. If the Court please, I offer in evidence certified copies of documents, being Government's Exhibit 2 and Government's Exhibit 3 and Government's Exhibit 4.

Government's Exhibit 2 is a certified copy of Order No. 2200 by the Secretary of the Interior in which he states that by virtue of the authority vested in him by the President of the United States by the Executive Order, which is Government's Exhibit 1, he takes possession of certain mines.

The COURT. What is the date of that, sir?

Mr. SONNETT. The Order provides that it shall become effective as of 12:01 A. M., May 22, 1946.

The COURT. Yes.

253 Mr. SONNETT. Government's Exhibit 3 is a certified copy of Order No. 2200–A, a similar supplementary order of the Secretary of the Interior dealing with certain additional mines taken under the same authority, and Government's Exhibit 4 is Order No. 2200–B of the Secretary of the Interior with respect to the operations under the Executive Order concerning the seized mines.

Mr. HOPKINS. If the Court please, the defendants, and each of them, object to the admission of the three documents, Government's Exhibits 2, 3, and 4, for the reason that they are not relevant to the issue on trial here, sit, to wit, the issue of a contempt.

The COURT. Well, I don't know that they are directly, but I presume they are introduced for the purpose of trying to preserve the continuity of the Government's procedure, aren't they?

Mr. SONNETT. In two respects, Your Honor, the Government thinks the exhibits are material.

First, the Government has alleged that a sovereign function was being performed by it with respect to the operation of the coal mines. These documents are submitted as evidence of the performance of that function.

Secondly, with respect to the question of irreparable injury, relevant of the issuance of the temporary injunction, we hope to

254 establish here, too, that the irreparable injury to the mines, or to the production of the mines, is based in part upon a showing that the Government had in fact taken over the mines.

So that we regard the evidence relevant and material on both questions.

Mr. HOPKINS. To which we respond, Your Honor, in turn, the question of sovereign function as alluded to by counsel; the question of irreparable injury as alluded to by counsel, as well as the motion for temporary injunction as alluded to by counsel, are not pertinent and relevant here, sir.

The question before Your Honor is one of contempt, and the defendants respectfully submit that the documents as offered, even under the Government's own offer of proof, and the reasons supporting it, do not make them relevant to the issue now on trial.

The COURT. Well, the Court has ruled this morning that the Norris-LaGuardia Act is out of the case. Then the matter resolves itself into the propriety, the legitimate propriety, in general, of the Court's action in issuing the restraining order.

The Court thinks this is clearly material, sir. The Court will have to overrule your objection.

Proceed.

Mr. HOPKINS. Note our exception.

The COURT. Yes.

205 (Documents heretofore identified as Government's Exhibit Nos. 2, 3, and 4 received in evidence.)

Mr. SONNETT. I will ask the Clerk to mark these documents for identification as Government's Exhibits Nos. 5, 6, and 7.

(Documents referred to were marked "Government's Exhibits Nos. 5, 6, and 7, for identification.")

256 The COURT. Are counsel waiting for something?

Mr. SONNETT. I am waiting for counsel for the defendants to finish their examination, if the Court please, of the documents I propose to offer.

The COURT. Oh, I see.

Mr. SONNETT. I offer in evidence, if the Court please, Government's exhibits 5, 6, and 7.

Government's exhibit 5 is a certified copy of an order by Secretary Krug, reading as follows, dated May 21, 1946:

"Instructions to the Telegraph Company. Send the following telegram to the mining company at address listed in the attached list:

"'Pursuant to the President's Executive Order, I assumed possession of the mines of your company at 12:01 a. m., May 22. Request you operate your mine and maintain full production. Letter follows.'"

Government's exhibit 6 is a certified copy of a letter, dated May 22, 1946, from the Secretary of the Interior, headed:

"To the President of the Mining Company."

It amplifies upon the telegram and instructions and advising the mining company that possession of the mine has been taken by the Government pursuant to the authority vested in the Secretary of the Interior by the President of the United States.

257 The COURT. Is that offered as an illustration of the different telegrams and letters sent to the different mine owners?

Mr. SONNETT. It is offered as a sample of all, because the same was sent in each case.

By Mr. SONNETT:

Q. Captain, am I correct in saying that Government Exhibit represents a letter which was sent in substantially the same language to the mining companies of all of the mines which the Government took under the Executive Order?

A. The answer is yes.

Q. Captain, I show you Government Exhibit 7, which is a printed notice, and ask you whether or not instructions were given by the Secretary of the Interior to have that notice, or a notice in substantially that form, posted at each of the seized mines.

A. Instructions were so given, and this is the notice.

Q. Would you read the notice, please?

A. "Notice: In accordance with the Executive Order of the President of the United States, Government possession of this coal mine has been taken by order of the Secretary of the Interior. Signed, J. A. Krug, Secretary of the Interior."

By the COURT:

Q. What is the date, sir?

A. It has no date, your Honor.

258 Mr. HOPKINS. Do I understand that the Government has made formal offer of Government Exhibits 5, 6, and 7?

Mr. SONNETT. The Government now offers those exhibits in evidence, if the Court please.

Mr. HOPKINS. In objection thereto, we restate the defendants' objections to these three documents as was stated in the acceptance of the documents Nos. 2, 3, and 4; to wit, that they are not relevant or germane to the issue in this case; further, that they were issued in May of 1946, some five or six months prior to the date of the temporary restraining order and the date of the proceedings involved in this case, to wit, the alleged contempt.

The COURT. The Court does not agree with you, sir. The objection is overruled. Proceed.

The Court thinks that these offers are part of the framework or background of the issue now before the Court. Proceed, sir.

Mr. SONNETT. The Clerk is making some additional formal exhibits, if the Court please.

The COURT. Yes.

(Thereupon Government's Exhibits 5, 6, and 7 were received in evidence.)

Mr. SONNETT. The Government offers in evidence Government Exhibits 8, 9, 10, and 11, if the Court please.

(Government Exhibits 8, 9, 10, and 11 were marked for identification.)

259 Mr. SONNETT. Government's Exhibit 8 is a certified copy of the order of the Secretary of the Interior designating Vice Admiral Ben Moreell as Deputy Coal Mines Administrator with certain powers.

Government's Exhibit 9 is an order of the Secretary of the Interior, dated June 5, 1946, dealing with the delegation of powers as Coal Mines Administrator to the Deputy Coal Mines Administrator, and designates Vice Admiral Ben Moreel, Deputy Coal Mines Administrator, as Coal Mines Administrator with powers to perform the functions of that office, and sets forth the functions of that office.

Government's Exhibit 10 is a certified copy of an order by Admiral Moreell, effective July 20, 1946, dealing with the designation of and delegation of powers to Deputy Coal Mines Administrator, and designates Captain N. H. Collisson, U. S. N. R., as Deputy Coal Mines Administrator with certain powers set forth in the order.

Government's Exhibit 11 is Order 2258 of the Secretary of the Interior Krug, designating Captain Norman H. Collisson, U. S. N. R., as Coal Mines Administrator to succeed Admiral Moreell.

Mr. HOPKINS. To which exhibits and tender defendants make the same general objection as heretofore stated to the Court.

The COURT. The Court thinks that these exhibits bear
260 directly upon the extent and nature of the control, of the sovereign power over the mines, in the public interest.

Proceed.

(Government Exhibits 8, 9, 10, and 11, previously marked for identification, were received in evidence.)

261 The COURT. Proceed.

By Mr. SONNETT:

Q. Captain, I show you Government's Exhibit 12 and ask you if you can identify that, please?

A. This is a listing of mines in Government possessions previously seized pursuant to executive order, the date of this listing being revised to 15 November 1946. It contains a list of the mining companies and their addresses, the index number of the mine, the operating manager, and the areas in which they are located.

Mr. SONNETT. I offer it in evidence, if the Court please.

Mr. HOPKINS. No objection, Your Honor.

(The document heretofore marked "Government's Exhibit No. 12 for identification" was received in evidence.)

By Mr. SONNETT:

Q. Captain, I show you Government's Exhibits 13 and 14 for Identification and ask you if you will please identify those?

A. Government's Exhibit No. 13 is the so-called Krug-Lewis agreement dated and effective May 29, 1946. It covers the terms and conditions of employment of those mines that were subject to the National Bituminous Coal Wage Agreement and were seized by the Government for the period of Government possession.

262 Mr. SONNETT. I offer the exhibit in evidence, if the Court please.

Mr. HOPKINS. No objection to that exhibit, Your Honor.

(The document heretofore marked "Government's Exhibit No. 13 for Identification" was received in evidence.)

By Mr. SONNETT:

Q. What is Government's Exhibit 14, Captain?

A. Government's Exhibit No. 14 is a formal application on the part of the Deputy Coal Mines Administrator to the Wage Stabilization Board for approval of the Krug-Lewis agreement, Government's Exhibit 13, and further contains a copy of order of the National Wage Stabilization Board dated May 31, 1946, and approved by the President of the United States as of the same date.

Mr. SONNETT. I offer it in evidence.

Mr. HOPKINS. To which we object for the reasons previously stated to Your Honor.

The COURT. Objection overruled.

(The document heretofore marked "Government's Exhibit No. 14 for Identification" was received in evidence.)

By Mr. SONNETT:

Q. I show you Government's Exhibit 15, Captain, and ask you to identify it, please.

263 A. Government's Exhibit No. 15 is Order No. CMAN-1, signed by the Deputy Coal Mines Administrator, dated June 1, 1946, and in it it directs all of the operating managers of the mines

previously seized by the Government pursuant to executive order, the terms and conditions of employment be amended to include those terms and conditions set forth in the Krug-Lewis Agreement of May 29, 1946.

Mr. SONNETT. I offer it in evidence.

Mr. HOPKINS. To which we object for the same general reasons stated, Your Honor.

The COURT. Objection overruled.

(The document heretofore marked "Government's Exhibit No. 15 for Identification" was thereupon received in evidence.)

By Mr. SONNETT:

Q. Captain, from time to time during the period of Government seizure of the mines, and prior to November 1, 1946, did you have conferences and meetings with representatives of the United Mine Workers of America concerning proposed changes in the so-called Krug-Lewis agreement?

Mr. HOPKINS. Before you answer, we object, Your Honor, for the following reasons:

This is a case on contempt before Your Honor. The question asked and the answer sought to be elicited is neither germane nor relevant to the issue on trial. We submit to Your Honor that the objection is well taken for those reasons.

264 Mr. SONNETT. If the Court please, one of the allegations of the charge of contempt is that the defendants wilfully did the acts with which they are charged.

The documents which we offer, and the evidence which we now propose to elicit from the Captain, we think respectively bear upon the issue of wilfulness.

The COURT. Were or were not these conferences held under the provisions of Section 5 of the Smith-Connally Act, in connection with the question which Government counsel asked?

The WITNESS. These were conferences that were held between the Coal Mines Administration and representatives of the Union, relative to changes or modifications in the existing Krug-Lewis Agreement.

The COURT. My question may not be clear to you.

The Smith-Connally Act provides in Section 5 the way and manner in which the contract between the Government and the Union can be modified.

In President Truman's proclamation when he took over the coal mines, the conditions under which they were taken over should be modified by Section 5 of the Smith-Connally Act, and what I am asking you is whether or not these conferences and any modifications which took place in the contract between the Government and the Union were made under the provisions of Section 5 of the Smith-Connally Act.

265 Mr. SONNETT. May I suggest, Your Honor, that by a question I think I might clarify what the Court has in mind.

The COURT. All right, sir.

By Mr. SONNETT:

Q. Captain, have you had any legal training at any time?

A. No; I have not.

Q. Are you able to state of your own knowledge whether these conferences were held pursuant to a particular provision of law, or not?

A. No; I am not.

Q. Are you able to testify concerning the facts of what transpired at the conferences?

A. Yes; I am.

Mr. SONNETT. The Government's offer of proof, if the Court please——

The COURT. I think the Court would have the right, in the absence of evidence to the contrary, to assume if conferences took place they took place in accordance with law. The law would be Section 5 of the Smith-Connally Act.

Proceed. The Court overrules the objection.

By Mr. SONNETT:

Q. Captain, did you answer the question as to whether or not——

Mr. SONNETT. Will the reporter read the question?

266 (Pending question read.)

A. Yes, sir; I did.

By Mr. SONNETT:

Q. Captain, I show you Government's Exhibit 16 and ask you if you can state—first, what is that exhibit?

A. Government's Exhibit No. 16 is a memorandum of agreement between the Coal Mines Administrator and the United Mine Workers of America, through their president, dated June 12, 1946.

Q. Did that memorandum of agreement follow negotiations with representatives of the United Mine Workers of America?

A. It followed negotiations between the United Mine Workers of America and the Coal Mine Administration.

Q. What led up to the making of that agreement, Captain?

A. In the Krug-Lewis Agreement, May 29, 1946, there is contained a provision for a vacation period to be taken during the period June 29 to July 8, 1946.

The purpose of the meeting with the United Mine Workers of America was to ask their agreement for a lesser vacation period due to the fact that coal stocks throughout the country had been depleted in the lay-off occurring earlier in the year and the net result of such agreement was that instead of the ten days, as provided in the agreement, being utilized as a vacation, it was agreed that

267 Thursday, Friday, Saturday, and Sunday of the period of July 4, starting July 4, would be taken as a vacation, and the rest of the ten-day period would be worked in the interest of production. It had no effect, of course, upon the vacation payment.

Q. That was one instance then, Captain, when the Krug-Lewis Agreement was modified by mutual consent after negotiations with the defendant: Is that not true?

A. Yes.

Mr. SONNETT. I offer it in evidence, if the Court please.

Mr. HOPKINS. No objection, Your Honor.

(The document heretofore marked Government's "Exhibit No. 16" for Identification was received in evidence.)

By Mr. SONNETT:

Q. Captain, I show you Government's Exhibit 17 and ask you if you can identify that document?

A. Government's Exhibit No. 17 is a memorandum of agreement dated 27 June, 1946, signed by the Coal Mines Administrator and the President of the United Mine Workers of America, and it deals with the appointment of a custodian in lieu of trustees for the funds or moneys collected under Section 4 (a) of the Krug-Lewis Agreement, the Welfare and Retirement Fund.

Q. What, in substance, Captain, was the Welfare and Retire-
268 ment Fund under the Krug-Lewis Agreement to which you referred?

Mr. HOPKINS. We object to that, Your Honor, as asking for a conclusion of the witness. The agreement speaks for itself.

The COURT. I will have to sustain the objection.

Mr. SONNETT. I will withdraw the question and I will read that provision of the agreement, which I thought counsel was familiar with, if I may have the exhibit.

Mr. HOPKINS. If the Court please, we object to that procedure because it is not relevant here to the issue. The issue on trial is squarely before this Court. It is one of contempt.

Now, an offer to read the excerpt in reference to the particular section of the contract pertaining to the Health and Welfare Fund is not germane, relevant, material, or pertinent to the issue at trial here.

The COURT. Mr. Hopkins, during the various arguments that have taken place here it has been contended that there was no actual, substantial control by the Government of the mines; that they were really under private control.

Now, one thing this sort of testimony does is to establish or disestablish, as the case may be, just what exercise, superintendence, and control the Government did have over these mines during this period of the Krug-Lewis Agreement, and for that reason, if for noth-
269 ing else, the Court thinks they are relevant.

Mr. HOPKINS. Will the Court hear me right there for a moment on an additional reason?

The COURT. Yes, sir.

Mr. HOPKINS. The matter of sovereignty, the matter of Government possession, was addressed to the question of the application of the Norris-LaGuardia Act, Your Honor.

Now, Your Honor has already ruled upon that subject by your ruling of this morning. It is not pertinent on the issue of contempt, sir. We submit that the objection is well taken.

Were it on the Norris-LaGuardia Act then Your Honor's reasoning would probably be the correct one, but not on the square, narrow issue now before this Court.

The COURT. Of course, it is hard to give every answer to every question right off the reel, but one thing this could do might be to throw light to another court as to the correctness of the Court's ruling as to the Norris-LaGuardia Act. It might bear upon that question.

Mr. HOPKINS. We submit when the narrow issue of contempt is before Your Honor as it now is, the matter of reading the particular section from an agreement that deals not with contempt—if it were on the Norris-LaGuardia Act, yes—but Your Honor has ruled upon

that subject and it is not pertinent, germane, or relevant to the issue here.

270 Mr. SONNETT. If the Court please, the charges upon which these defendants are now on trial——

The COURT. When the Court rules with you, I would advise you not to make a comment. You might say something that would require the Court to reverse itself.

(There was laughter in the courtroom.)

Mr. SONNETT. I withdraw my argument, if the Court please. I was not aware of Your Honor's ruling, and I apologize.

The COURT. Yes, sir.

Mr. SONNETT. Referring to Government's Exhibit No. 13 in evidence, Section 4 provides—is headed "Health and Welfare Program" [Reading]: "There is hereby provided a Health and Welfare Program in broad outline, and it is recognized that many important details remain to be filled in.

"Such programs consist of three parts as follows:

"(a) A Welfare and Retirement Fund: A Welfare and Retirement Fund is hereby created and there shall be paid into said fund by the operating managers five cents per ton on each ton of coal produced for use or for sale. This fund shall be managed by three trustees; one appointed by the Coal Mines Administrator, one appointed

271 by the President of the United Mine Workers, and the third chosen by the other two. The fund shall be used for making payments to miners and their dependents and survivors—" with respect to various purposes set forth in the agreement not at the moment material.

By Mr. SONNETT:

Q. Captain, I refer you to Government Exhibit No. 17 and ask you if you can identify that document.

A. Government's Exhibit No. 17 is a memorandum of agreement signed by the Coal Mines Administrator and the president of the United Mine Workers of America, dated 27 June 1946.

Mr. SONNETT. I offer it in evidence, if the Court please.

Mr. HOPKINS. To which we make no objection.

(Thereupon, Government's Exhibit No. 17, heretofore marked for identification, was received in evidence.)

Mr. SONNETT. Government's Exhibit No. 17 provides in part:

"The undersigned hereby agree as follows:

"Pending the appointment of trustees as provided in Section 4 (a) of the Krug-Lewis Agreement of May 29, 1946, the Postmaster General of the United States Navy is hereby designated to act as

272 custodian of the monies to be paid in accordance with the provisions of that section."

By Mr. SONNETT:

Q. Now, did that agreement, represented by Government's Exhibit 17, follow negotiations with the representatives of the United Mine Workers of America, Captain?

Mr. HOPKINS. To which we object for this reason, that there is no such position as Postmaster General of the United States Navy, as announced by counsel.

The COURT. What is the Postmaster General of the United States Navy?

Mr. SONNETT. I may have misread it, and I am very sorry, if the Court please, to have misled counsel, and I will be very happy to read it again.

I am certain that the objection goes to the substance of the matter.

The COURT. I understood you to say Postmaster General of the United States Navy.

Mr. SONNETT. I am sure I did, sir, and I apologize. It was a slip of the tongue, but since counsel has examined the agreement——

The COURT. I thought I had heard everything before, but——

Mr. SONNETT. It surprised me, sir.

I will read it again.

273 "The undersigned hereby agree as follows:

"Pending the appointment of trustees as provided in Section 4 (a) of the Krug-Lewis Agreement of May 29, 1946, the Paymaster General of the United States Navy is hereby designated to act as custodian of the monies to be paid in accordance with the provisions of that section."

Does the counsel still object, if the Court please?

The COURT. I don't know, sir.

Mr. HOPKINS. We offer no objection.

By Mr. SONNETT:

Q. Now, I will repeat the question, Captain.

Did that agreement follow negotiations with representatives of the United Mines Workers of America?

A. It did.

Q. Who is it signed by?

A. It is signed by Vice Admiral Ben Moreell, Coal Mines Administrator, and Mr. John L. Lewis, president of the United Mine Workers of America.

Q. Captain, I show you Government's Exhibit No. 18 and ask you if you can identify that document.

A. Government's Exhibit No. 18 is a memorandum of agreement, dated August 28, 1946, signed by the Coal Mines Administrator, and the acting president of the United Mine Workers of America,

274 which provides that a custodian of the funds collected for the medical and hospital fund under Section 4 (b) of the Krug-Lewis Agreement, is established.

Mr. SONNETT. I offer it in evidence.

Mr. HOPKINS. To which there is no objection.

(Thereupon, Government's Exhibit No. 18 for Identification was received in evidence.)

By Mr. SONNETT:

Q. Captain, going back for a moment to Government's Exhibit No. 17 which relates to the funds in the custody of the Paymaster General of the Navy for the Welfare Fund, how much, to the best of your information, is in that fund as of November 20, 1946?

A. Ten million one hundred thousand——

Mr. HOPKINS. Just a second. I did not get that question, Your Honor, and I wonder if counsel will have the Reporter re-read the question.

The REPORTER (reading):

"Q. Captain, going back for a moment to Government's Exhibit No. 17 which relates to the funds in the custody of the Paymaster General of the Navy for the Welfare Fund, how much, to the best of your information, is in that fund as of November 20, 1946?"

Mr. HOPKINS. Go ahead, sir. I did not get the question.

275 The WITNESS. Approximately $10,100,000 as of November 20, 1946.

By Mr. SONNETT:

Q. Captain, referring to Government's Exhibits 16, 17, and 18, which you have just seen, is it true that they represent three modifications of the Krug-Lewis Agreement which followed in each instance negotiations conducted by the Government with the representatives of the United Mines Workers of America, including at times the defendant Lewis?

A. That is correct, in the case of all three.

276 Q. Captain, I show you Government Exhibit 19 and ask you if you can identify that document.

A. Government Exhibit No. 19 is a copy of a letter from the United Mine Workers of America, signed by John L. Lewis, President, to the Honorable J. A. Krug, Secretary of the Interior, dated October 21, 1946, and received by me in the absence of the Secretary of the Interior.

Mr. SONNETT. I offer it in evidence.

Mr. HOPKINS. No objection, your Honor.

(Government Exhibit 19 was thereupon received in evidence.)

By Mr. SONNETT:

Q. Captain, in that letter——

Mr. SONNETT. I will withdraw the question.

May I invite the Court's attention to the portion of this letter which requests a conference with the representative of the Government for certain purposes stated in the letter, and which suggests that under the National Bituminous Coal Wage Agreement, dated April 11, 1945, either party may give 10 days' notice in writing of a date for negotiating a conference?

By Mr. SONNETT:

Q. Did you respond to that letter, Captain?

A. Yes, I did.

277 Q. Captain, I show you Government Exhibit No. 20 and ask you if you can identify that document.

A. Government Exhibit 20 is a copy of a letter from the Coal Mines Administrator to Mr. John L. Lewis, President of the United Mine Workers of America, dated October 22, 1946, in which I made reply to Mr. Lewis' letter to the Secretary of the Interior of October 21, 1946.

Mr. SONNETT. I offer it in evidence.

Mr. HOPKINS. We have no objection.

278 By Mr. SONNETT:

Q. Will you read it, Captain, please?

A. "Mr. John L. Lewis, President, United Mine Workers of America, United Mine Workers Building, Washington 5, D. C.

"DEAR MR. LEWIS: The Secretary of the Interior has requested me to reply to your letter of October 21 addressed to him.

"I desire to reaffirm the position taken in my letter of yesterday prepared prior to the receipt by me of your letter to the Secretary, to the effect that the Coal Mines Administration has not taken any action which would constitute a breach of the Krug-Lewis Agreement.

"Those provisions of the District Agreements, carried forward by the Krug-Lewis Agreement, adequately provide for the settlement of disputes concerning the proper interpretation of the contract by the ultimate submission of these disputes to arbitration. The position of the Coal Mines Administration has always been that the grievance procedure, culminating in arbitration, is the proper medium for the settlement of disputes concerning the meaning of the contract.

"That your organization understood this position is evidenced by the fact that it initiated the proceedings resulting in the arbitrator's decision in Illinois concerning pro rata vacation payments to which you refer in your letter. At no time has this Administration refused the enforcement of arbitrators' decisions. Any delay with respect to the over-all effects of the arbitrator's decision in Illinois was caused largely by your illness. Moreover, we wish to correct your statement that this decision was rendered on August 6, 1946. It was actually rendered on August 31, 1946, and this office advised thereof by you by letter dated September 9, 1946.

"With respect to your statement that significant changes in Government wage policy have occurred, such changes, if any, provide no contractual basis requiring negotiations for a revision of the Krug-Lewis Agreement.

"Your reference to Section 15 of the National Bituminous Coal Wage Agreement of April 11, 1945, as a basis for requiring contract negotiations looking toward a revision of the existing Agreement is clearly unwarranted, for a number of reasons. No attempt is made to detail all these reasons; but, among them, is the obvious fact that the Krug-Lewis Agreement itself superseded Section 15 of the National Bituminous Coal Wage Agreement. The Krug-Lewis Agreement states that it covers for the period of Government possession the terms and conditions of employment in respect to all mines in Government possession. This statement of the Agreement's life is unqualified. The Krug-Lewis Agreement carries forward only those terms and provisions of past contracts which were not amended or supplemented by the Krug-Lewis Agreement. To now contend that the life of the Krug-Lewis Agreement was subject to the provisions of Section 15 of the 1945 Agreement is tantamount to contending that the Krug-Lewis Agreement could have been reopened the day after it was signed. Obviously, the unqualified statement of the May 29, 1946, document amends and eliminates the 1945 provisions which you cite.

"I am, therefore, unable to treat your letter of October 21, 1946, as a notice given pursuant to any existing contract provisions requiring a joint conference for the purpose of negotiating new arrangements affecting wages and other matters.

"The Administration considers that the Krug-Lewis Agreement is in full force and effect and calls upon the United Mine Workers of America, who have always prided themselves on fulfilling their contract obligations, to abide by the terms of that agreement.

"The Administration is ready, as it has been in the past, to meet with you to discuss matters affecting the operation of the bituminous

coal mines under the Krug-Lewis Agreement, and for that purpose, with the above reservation, any date for such discussions is agreeable to this Administration.

"It is suggested that any negotiating conferences looking toward a new agreement for the operation of the bituminous coal mines be had with the representatives of the owners of such mines. The Coal Mines Administration continues ready to lend its good offices to
281 promote such negotiating conferences, thereby continuing the negotiations which were temporarily recessed pending the Mine Workers convention early this month. Such an Agreement would accomplish the result which has been publicly expressed as the desire of the Coal Mines Administration, the United Mine Workers, and the operators, namely, the return of the mines to private operation.

"Very truly yours, N. H. Collisson, Captain, U. S. N. R., Coal Mines Administrator."

Q. I show you Government Exhibit 21, Government Exhibit 22, Government Exhibit 23, and Government Exhibit 24, and ask you, Captain, to state in general what those documents are.

A. Government Exhibit No. 21 is a copy of a telegram from the Secretary of the Interior at Amarillo, Texas, to Mr. John L. Lewis, President of the United Mine Workers, in which the Secretary points out that his existing tour will not permit him to meet on November 1 but that he will meet with the United Mine Workers at Tule Lake, California, at which location he would be on November 1.

Mr. SONNETT. I offer that in evidence, if the Court please.

Mr. HOPKINS. No objection.

(Government Exhibit 21 was received in evidence.)

By Mr. SONNETT:

Q. Will you read that in full, Captain?

282 A. "October 22, 1946, Amarillo, Texas. "John L. Lewis, President, United Mine Workers of America, United Mine Workers Building, Fifteenth and I Streets, Northwest, Washington, D. C.

"Today Captain Harvey Collisson, Coal Mines Administrator, wrote you giving our views on the Krug-Lewis Agreement and said that we would be agreeable to meet with you at any time if you desire to discuss provisions of the existing contract between the United Mine Workers and the United States Government. I understand that your preference is to meet about November 1, and I want to meet your wishes. On that date, I will be at Tule Lake, California, discussing our program for Veterans' Settlement but would find a way of arranging time for our meeting if you want to meet there. However, if it should better meet your convenience, I will see you in Washington directly after my last publicly announced address on November 6 to the Town Hall in Los Angeles which ends my committed western inspection trip. Will you please let my office know what arrangement will suit you best?

"J. A. Krug, Secretary of the Interior."

Q. Is Government Exhibit 22 the response to that from Mr. Lewis?

A. It is.

Mr. SONNETT. I offer that in evidence.

Mr. HOPKINS. May it be read?

Mr. SONNETT. I am going to ask that it be read.

283 Mr. HOPKINS. Very well.

By Mr. SONNETT:

Q. Will you read it, please, Captain?

A. Government Exhibit 22 is a copy of a letter from the United Mine Workers of America, signed by John L. Lewis, President, dated October 22, 1946, addressed to the Honorable J. A. Krug, Secretary of the Interior, Washington, D. C.

"Dear Mr. Secretary:

"This will reply to your telegram from Amarillo and Collisson's letter from Washington of October 22.

"The existing Krug-Lewis Agreement expressly provides that both parties to the Agreement are bound to meet within a 10-day period upon formal request of either party. Such formal request was filed yesterday by the United Mine Workers of America. Failure on your part to honor this meeting will constitute another breach of the contract and will void the Krug-Lewis Agreement.

"Yours truly, John L. Lewis, President."

Q. Referring to Government's Exhibits 23 and 24, Captain, will you state briefly what those are, so that we may offer them in evidence?

A. Government Exhibits 23 and 24—I presume they are numbered in sequence—then, No. 23 is a copy of a wire dated October 27, 1946, from Phoenix, Arizona, from J. A. Krug, Secretary of the

284 Interior, to Mr. John L. Lewis, President, United Mine Workers of America, Washington, D. C., which reads as follows:

"Replying to your letter of October 21, I am requesting that you and/or your representatives meet with Coal Mines Administrator Collisson and his associates on November 1 or any other date agreeable to you.

"J. A. Krug, Secretary of the Interior."

Q. Read Government Exhibit 24, please.

A. Government Exhibit 24 is a copy of a wire from Mr. John L. Lewis to the Honorable J. A. Krug, Secretary of the Interior, dated October 28, 1946.

"I esteem your telegram 27th received by me today as compliance with request for official conference contained in my letter October 21. I accordingly advise that representatives United Mine Workers will meet with Coal Mines Administrator Collisson and his associates at 11 o'clock a. m. on Friday, November 1. Under these conditions Krug-Lewis Agreement remains effective and unchanged during the ensuing period of negotiations.

"John L. Lewis."

Mr. SONNETT. I offer both of those in evidence.

Mr. HOPKINS. No objection.

(Government Exhibits 23 and 24 were received in evidence.)

By Mr. SONNETT:

Q. Now, Captain, beginning on or about November 1, 1946, did you have conferences with representatives of the United

285 Mine Workers of America?

A. Yes, I did.

Q. On what dates did you conduct such conferences?

A. I conducted such conferences on November 1, November 4, November 6, and November 7, 1946.

Q. Will you state who was representing or was in charge of the representatives representing the United Mine Workers of America at those conferences?

A. It was my understanding that Mr. O'Leary, Vice President, was representing the United Mine Workers.

Q. Now, Captain, will you to the best of your recollection, state in substance what transpired at the meetings which you have just mentioned?

A. At the meeting of November 1, 1946, I explained to Mr. O'Leary and his associates that this meeting had been requested by them; that I was ready and willing to listen to the matters they wanted to discuss.

There followed, then, a discussion as to my authority to negotiate. My answer to that was that, in accordance with the powers of the Executive Order, and with the limitation of the War Labor Disputes Act, with respect to entering a contract, I had full power to negotiate.

We then discussed over this period of days—and I am not clear just what happened on each day; I am clear as to the items we
286 discussed—we discussed a number of points coming up under the Krug-Lewis Agreement. We discussed powder charges; we discussed the 5-cent-per-ton payments to the 4–A fund, namely, whether that charge was made on railroad weights or on the so-called tipple weights; we discussed the Federal Mine Safety Code, and means of expediting action during this rather dangerous period of the year in the mines.

On at least two occasions—and I think on only two—there was a statement made by the United Mine Workers that their working hours were too long and that at the proper time they would make known those demands to me.

They also asked me if I were aware of the inadequacy of the 5-cents-per-ton—the 4–A fund of the Krug-Lewis Agreement—to carry forward and get for the miners the benefits they wanted under that fund.

They asked me if I was informed as to the administration and adequacy of other similar funds in other industries, and I informed them that I was not familiar with the adequacy or inadequacy as compared with those other funds, nor the administration of those other funds, but that I would make such information—I would get such information.

The gist of the meetings over those days was on the subjects that I have just mentioned. At no time was a direct demand or request made upon me with respect to changes in terms and conditions of em-
ployment, other than the two items that I have mentioned,
287 namely, that the men were working too long and, (2) information relative to the inadequacy of the health, welfare, and retirement fund.

On the final day, I told them that the meeting had been called at their request and that since we had gone through this time without any formal request for changes, I again wanted to bring it to their attention that that is what I was there for and that I was ready to listen to any point they cared to discuss.

On the first day—I think there is one other significant matter—directly after our discussions in the morning I asked them that before

they made any demand on me for wages or hours, I felt it only fair to again urge that they consider a recessing of that meeting with me in order to attend a meeting, which I would be glad to arrange, with the operators, so that the recessed meeting of September 13, called by Admiral Moreell, could be carried forward in an effort to settle that outstanding dispute or arrange a contract mutually agreeable to the operators and to the Union.

I told them that that meeting of September 13 had been recessed—had been recessed in order to permit Mr. Lewis to go to his convention, at his request, and take up a matter of policy with his membership. That had been done, and there had been no official answer, insofar as we were concerned, received since that date.

288 No. 2: The Union itself—and I quoted excerpts from a resolution coming from the Union—the Union itself in convention had urged that negotiations be resumed with the operators and branding the Government operation, as I recall it, a fake and a delusion.

I said that the operators, too, wanted their properties back and were ready and willing and had given me their assurance that they would meet at any date that was convenient and agreeable, and I urged that they accept such a meeting, which I would use my good offices to obtain and arrange, before they had told me their demands, in order that their bargaining position would remain unknown, and hence fair in their interests, in reaching such an agreement.

Their answer to me was no.

I repeated that on the final day of my chairmanship of the meetings, and their answer was still no.

Q. In the meantime, you had had how many meetings with them?

A. On the 1st, 4th, 6th, and 7th—four days' meetings.

Q. Was there at your early meeting a discussion of the question whether or not the conferences were being held pursuant to Section 15 of the Agreement of April 11, 1945?

A. Yes; there was.

Q. State what that was, please.

A. At the meeting of November 1, after the opening, in which they questioned or asked my authority to negotiate, they

289 immediately made clear their position in going forward with these meetings, namely, that it was under Section 15 and that, therefore, time was running out against me as per provisions of that section.

I told them that that was not the position of the Coal Mines Administration; that we were ready to listen to them, discuss and negotiate any matters upon which we could agree, coming under the Krug-Lewis Agreement.

I pointed out to them that they had a ready relief and remedy under section 5 of the Smith-Connally Act, to appeal to the Wage Stabilization Board for changes in that contract. But until I knew what those changes were, I was quite willing to sit and listen to them, and listen to them sincerely.

I further stated—I suggested that since it was obvious, after some discussion, that we could not agree on that point, that each party proceed without prejudice to his position with respect to a position on Section 15 of the Krug-Lewis—April 11, 1945, Agreement, I taking the position that the Krug-Lewis Agreement was for the term of Govern-

ment possession and operation, they taking the position that under Section 15 such conference was called in accordance with that, and the time limit thus imposed by that.

I understand that each side proceeded without any change in their positions.

290 Q. I show you Government's Exhibit No. 25, Captain, and ask you if you can identify that.

A. Government's Exhibit No. 25 is a copy of a letter from the United Mine Workers of America, signed by John L. Lewis, President, dated November 15, 1946, and addressed to the Honorable J. A. Krug, Secretary of the Interior, Washington, D. C.

Mr. SONNETT. I offer it in evidence.

Mr. HOPKINS. Just a second. We may want to see it.

Mr. SONNETT. All right, I am sorry.

Mr. HOPKINS. Are you offering it in evidence, Mr. Sonnett?

Mr. SONNETT. I am, indeed.

(The document was handed to counsel.)

Mr. HOPKINS. To which there is no objection.

(Thereupon, Government's Exhibit No. 25 for identification was received in evidence.)

By Mr. SONNETT:

Q. Will you read that document, please, Captain?

A. Dated November 15, 1946, and addressed to the Honorable J. A. Krug, Secretary of the Interior, Washington, D. C.

"DEAR MR. SECRETARY: In accordance with the provisions of the Krug-Lewis Agreement dated May 29, 1946, the United Mine

291 Workers of America on October 21, 1946, officially requested a joint conference of the accredited representatives of the joint contracting parties to said agreement. Such conference convened on November 1, 1946.

"Fifteen days having now elapsed since the beginning of said conference, the United Mine Workers of America, exercising its option, hereby terminates said Krug-Lewis Agreement as of 12:00 o'clock, p. m., midnight, Wednesday, November 20, 1946.

"Yours truly,

"UNITED MINE WORKERS OF AMERICA,
"By JOHN L. LEWIS, *President*.

Q. Captain, to your knowledge did you or anybody else in the Coal Mines Administration release the text of that letter to the press, or otherwise release it publicly?

A. Not to the best of my knowledge.

Mr. SONNETT. You may inquire.

The COURT. The Court will take a five-minute recess.

(Thereupon, a brief, informal recess was had, after which the proceedings were resumed as follows:)

292 CROSS-EXAMINATION

By Mr. HOPKINS:

Q. Captain Collisson, as I understand you to testify on direct, in identifying and putting into the record certain Government exhibits, 16, 17, and 18, and particularly referring to them at the moment, that they were adjustments or interpretations of what is known as the

Krug-Lewis Agreement of May 29, 1946; Government's Exhibit 16 being the one in reference to the limited vacation in which the Mine Workers modified the existing vacation clause of the agreement. That is correct, sir, isn't it?

A. That is correct.

Q. Government's Exhibit 17 also was an interpretation of the existing Krug-Lewis Agreement pertaining to the custodian of the moneys to be paid in under Section 4 (a) of the Krug-Lewis Agreement. That is correct, sir, isn't it?

A. That is correct.

Q. Government's Exhibit No. 18, headed "Memorandum of Agreement" is in reference to the interpretation of the contract under Section 10 of the agreement in reference to the handling of fines or penalties which might be collected under the terms of Section 10 of the Krug-Lewis Agreement. That is correct, sir, isn't it?

A. That is my memory.

293 Q. All three documents were agreements reached after the negotiation of the Krug-Lewis Agreement of May 29, 1946?

A. That is correct.

Q. The date of Exhibit 16 being June 12, 1946; the date of Exhibit 17 being June 27, 1946; and the date of Government's Exhibit 18 being August 28, 1946: That is correct, sir, isn't it?

A. I don't remember dates, Mr. Hopkins, but I think——

Q. The exhibits being so dated you would not dispute them?

A. Not at all.

Q. On Government's Exhibit 16, after having modified the Krug-Lewis Agreement, did you, sir, or to your knowledge did the Secretary of the Interior, or the then Coal Mines Administrator, Admiral Moreell, submit that modification to the War Stabilization Board?

A. The Wage Stabilization Board?

Q. To the Wage Stabilization Board.

A. I believe a copy of it was sent to the Wage Stabilization Board.

Q. Did the Wage Stabilization Board to your knowledge issue any order either approving or disapproving that modification of the agreement?

A. If my memory is correct, Mr. Hopkins, they acknowledged receipt of it with no cause for action.

Q. Will your files have a copy of the communication that
294 transmitted this agreement to the Wage Stabilization Board, and their acknowledgement, about which you speak?

A. It would have, yes, if my memory is correct.

Q. Would you undertake to produce them if they are there?

A. Yes, I will get them.

Q. In reference to Government's Exhibit 17, dated June 27, that pertains to the interpretation of the Krug-Lewis Agreement in reference to Section 4 (a), was that submitted to the Wage Stabilization Board?

A. I am not clear as to whether it was or not.

Q. If it was would your files show a copy of the letter of transmittal and any reply, if any, from the Wage Stabilization Board?

A. They would.

Q. Would you undertake to produce those?

A. I will.

The COURT. Just so there will be no delay, you will produce them at 10 o'clock Monday morning?

Mr. HOPKINS. I mean next Monday, yes, sir. I understand that to be impossible from the standpoint of time.

The COURT. All right.

By Mr. HOPKINS:

Q. In reference to Exhibit 18, dated August 28, which has to
295 do with the interpretation of Section 10 of the Krug-Lewis agreement, was that submitted to the Wage Stabilization Board?

A. I am not clear that it was. I don't know that it was or that it wasn't, Mr. Hopkins, but again, I would be only too glad to look over the files and if it was the submission and the reply of the Wage Stabilization Board would be in my files.

Q. And you will be in position to testify on that point Monday morning?

A. I will, sir.

Q. In reference to Exhibit 16, dealing with the vacation, is it not a fact, Captain Collisson, that that modification of the agreement was arrived at and agreed to by Mr. Lewis, as president of the Mine Workers, at the request of the Coal Mines Administration?

A. That is correct.

Q. And the same thing is true as to Exhibit 17 in reference to the custodian pending the appointment of trustees: Is that not so, sir?

A. Yes, sir, it was at our request; the Coal Mines Administration's request.

Q. Very well. Captain, you have referred in your direct examination to various conferences that you and your associates held with the Mine Workers and their representatives between May 29,
296 the date of the agreement, and November 1 of this year.

May I not ask you if it is not true that in one of the conferences there was discussed an interpretation of the Krug-Lewis Agreement pertaining to fines that had been assessed, levied, and collected by various Government operators in the several districts: Is that not true, sir?

A. At at least one conference.

Q. And is it not true, sir, that you had made, or your Coal Mines Administration, had made certain rulings in reference to fines and had allowed them to be levied and collected in at least one instance, or more?

A. We had authorized, on application, certain fines.

Q. And is it not true that the Mine Workers, appearing in an attempt to construe the contract with you, objected to the levying of those fines?

A. Yes, sir, they did.

Q. And is it not true, Captain, that after the Mine Workers' objections and discussion as to the interpretation of the agreement, you authorized and directed the revocation of those fines?

A. No, I am not clear on that.

Q. In at least one instance? Is that not true, sir?

A. We revoked a lot of fines. I think we—I don't think, I know we—revoked many fines, but I don't remember the incident you are talking about.

297 Q. But it is true you did authorize the revocation and repayment by your operating managers of certain fines in certain instances that had been levied and collected?

A. That is correct, wherever the operating manager, we felt, had in any way participated in encouraging a walk-out we did revoke fines.

Q. That was the result of the Mine Workers disputing your right under the contract to have that done: Is that not correct, sir?

A. No, I don't recall that, Mr. Hopkins. I remember many conferences on those subjects.

Q. In which the Mine Workers were disputing the authenticity or the righteousness of those fines under the contract: Isn't that correct?

A. Now, my understanding—my memory of those conferences was that the United Mine Workers stated that fines to be authorized or not authorized by me should first have the approval of the United Mine Workers, and I said that that was not in the contract and I couldn't read it into the contract, and they said, "No, it is not in there but it was discussed when the Krug-Lewis Agreement was made."

I said, "Well, gentlemen, I will be glad to get your views on any of those, and we will let you know those in which, after investigation by us they appear justified, those cases where we do authorize the levying of the fines."

298 Q. In those instances, no matter how many there were, whether one or more, when you did make the ruling and later authorized the return of the money, did you submit that ruling to the Wage Stabilization Board for its approval?

A. No.

Q. Is it not true also, Captain Collisson, that certain disputes arose between the Coal Mines Administrator and the representative of the Mine Workers in reference to an attempt on the part of certain operators to raise the rental on company-owned houses?

A. That is correct.

Q. And isn't it true that after discussing with you that point in dispute that you made certain rulings in reference to house rent and sent out such rulings to your Government operating managers?

A. I wouldn't call them rulings. They were directives to my operating managers.

Q. Were those directives issued after the dispute had been ironed out between the representative of the Mine Workers and the Administrator? Were those directives submitted to the Wage Stabilization Board?

A. No.

Q. Is it not true, Captain Collisson, that also disputes arose as between the Mine Workers and the Coal Mines Administration

299 in reference to the prices being charged by your operating managers in the several companies for coal used by the mine workers themselves in their houses?

A. Coal sold by the companies to the mine workers?

Q. And used in their respective homes.

A. That is correct. I sent out directives, or instructions, to our operating managers.

Q. And those instructions, I ask you is it not a fact, were sent out after the dispute had been ironed out as between the representative of the Mine Workers and representatives of the Coal Mines Administration?

A. In the greater number of cases, yes.

Q. And were any of those directives before they were sent out submitted to the Wage Stabilization Board?

A. Not to the best of my knowledge.

Q. And isn't it true also, Captain Collisson, that certain disputes arose as between the Mine Workers and the Coal Mines Administrator, under the Krug-Lewis Agreement, as to the price that the companies were charging the mine workers for the powder that they used?

A. That is correct.

Q. And isn't it true that in those instances attempts were being made and were made to increase the price of powder to the mine workers?

A. That is right.

Q. And other explosives?

300 A. That is correct.

Q. And isn't it true that after the dispute as between the Mine Workers and representatives of the Coal Mines Administration was settled, that you sent certain directives to your various operating managers to settle that dispute?

A. That is correct.

Q. Were any of those directives, sir, submitted to the Wage Stabilization Board?

A. Not to the best of my knowledge.

Q. And isn't it true, Captain Collisson, that a rather major dispute arose in reference to what is called "Service Charge" or the charge made against the miners in what we call laying the coal on the carpet?

A. There was a dispute; I don't know whether it was major. These were all major disputes. There was such a dispute; yes.

Q. And isn't it true that lengthy conferences upon that dispute were had between the representatives of the Mine Workers, yourself, the then Coal Mines Administrator, Admiral Moreell, and others of your staff?

A. That is correct.

Q. And isn't it true, sir, that as a result of that dispute the Mine Workers objecting as they did, you wrote a letter that reversed your previous ruling upon that dispute?

A. In certain cases we did; yes.

301 Q. May I ask you again, sir, did you submit those letters or directives to the Wage Stabilization Board which settled that dispute?

A. No; we did not, not to the best of my knowledge and belief.

Q. Captain Collisson, there is a section of the Krug-Lewis Agreement, I believe, dealing with an interpretation of the vacation clause. Isn't it a fact, sir, that a very major dispute arose between the representatives of the Mine Workers and the Coal Mines Administration as to the interpretation of that vacation clause, as to pro rata payment?

A. That is correct, and that was major.

Q. And it is correct that that dispute was discussed, and the facts involved in it, both with you, Admiral Moreell and the Secretary of the Interior on numerous occasions?

A. That is correct.

Q. And isn't it a fact, sir, that you settled that dispute after what was known as the Illinois Arbitration Award of August 31, 1946, or

to put it this way: Isn't it true that the settlement you finally made was based upon an award made by an arbitrator in Illinois dated August 31, 1946?

A. That is correct. I am hesitating about the date.

Q. Approximately that.

A. But it appears to be about correct.

302 Q. Then during the month of August, and prior to that time, there was a dispute between the Mine Workers and the Coal Mines Administrator in reference to pro rata vacation payments: Isn't that true?

A. That is correct.

303 Q. During the months of July, August, and September, and it was still pending in September?

A. That is correct.

Q. It was still pending in October?

A. Well, for a portion of October, yes.

Q. And was pending on October 21 when the original notice was given to the Secretary of the Interior of the Mine Workers asking for the reopening of the Krug-Lewis Agreement?

A. It was not pending as of the time of our receiving of the letter.

Q. It was not resolved, sir, until you wrote your letter of October 21 after you had received the notice from the Mine Workers of the same date that we were reopening the contract?

A. No, but as the letter said, that letter was made, Mr. Hopkins, prior to our receipt of the letter addressed to Mr. Krug.

Q. Put it this way, then. It was not resolved—that dispute was not resolved until you wrote your letter of October 21?

A. That is correct.

Q. May I ask, sir, did you submit to the Wage Stabilization Board your letter of October 21?

A. That is correct; we did.

Q. You did?

304 A. Yes.

Q. Would you have a copy of that?

A. I will.

Q. And their reply?

A. I believe their reply also.

Q. Very well, sir.

Now, Captain Collisson, is it not true, sir, that on October 21 in reference to the adjudication of the vacation dispute, that you wrote a letter to Mr. Lewis?

A. That is correct.

Q. Do you have with you now, sir, a copy of that letter?

A. No; I do not, Mr. Hopkins.

Mr. HOPKINS. For the purposes of getting it into the record as of this time, if the Court please, and without having the original in front of us, to wit, the original letter written by Captain Collisson to Mr. Lewis, I will ask him to take a look at this copy that I now present him and ask him to read it over and see if it is a true and correct copy of his original letter.

(The document was handed to the witness.)

Mr. SONNETT. If the Court please, I think I have a certified copy of the letter to which counsel refers. If it is the same letter, I would be very happy to make it available to him.

Mr. HOPKINS. Thank you, sir. I will accept the same and be delighted to make use of it.

The WITNESS. I believe that is——

By Mr. HOPKINS:

Q. His answer is—make your answer for the record.

A. I believe that is a copy of the letter.

Mr. HOPKINS. Your Honor, Government counsel having been kind enough to furnish us a certified copy of the letter to which I refer, I should like to present it to the witness and ask him to read it into the record, it being pertinent at this time on further cross-examination.

The COURT. Yes.

Mr. HOPKINS. That will be Defendant's Exhibit No. 1, for identification.

(The document referred to was marked "Defendant's Exhibit No. 1 for identification.")

The WITNESS. Defendant's Exhibit No. 1 is a copy of a letter dated October 21, 1946, to Mr. John L. Lewis, President of the United Mine Workers of America, Washington, D. C.

"DEAR MR. LEWIS: Secretary Krug has requested that I write to you with respect to the position of the Coal Mines Administrator on two of the matters which were discussed with you at your
306 meeting with him Saturday, October 19; namely, the pro rata retroactive vacation pay and measurements of tonnage to which 5¢ per ton for the Welfare and Retirement Fund is being applied.

"Although we believe that the position heretofore taken by this Administration with respect to the application of the pro rata vacation clause represented a reasonable and proper interpretation of the May 29, 1946, Agreement, it has been concluded that, cases having proceeded to the arbitrator in the Illinois District in accordance with the grievance procedure provided for in the District Agreement, the arbitrator's decision is final and binding upon the parties to the contract in accordance with its terms. Accordingly, I am advising the Illinois coal operators forthwith to comply with, and abide by, such decision.

"Inasmuch as cases which might arise in other districts would involve only interpretation of the same clauses as those involved in the Illinois District cases and would present identical issues, I am accepting the Illinois decisions as controlling precedents and issuing the necessary order to the operators of mines in Government possession in all districts to comply with the interpretation found by
307 the arbitrator in the Illinois cases.

"With respect to the weights to be used in determining payment of the 5¢ per ton required by Section 4 (a) of the Agreement, I wish to inform you that the position of this Administration is that which has been consistently taken during the negotiation of the contract and since its execution; namely, the 5¢ is payable with respect to salable or usable coal produced and is not payable with respect to impurities or foreign substances which may be mined along with the coal but which are eliminated by cleaning or other processing before sale. The Administrator's Order CMAN-8 clearly requires weights to be determined 'at the mine.' It is, therefore, not intended to permit any loss to the fund which occurs through shrinkage of salable coal between the tipple and distant railroad scales, theft, or other loss of salable or usable coal which are not reflected in railroad weights. Op-

erators who are not reporting and paying in accordance with this interpretation will be required to do so when any deviations are brought to our attention. This Administration is not willing, however, to accept tipple weights or other mine weights which ad-
308 mittedly include varying, and at times substantial, percentages of impurities and foreign substances which are removed from the coal before it is considered salable. Cleanings, dust, and other coal products which result from processing the run of mine coal and which are sold as coal should also be treated as coal produced for the purposes of the 5¢ per ton payments.

"Although the underlying contract structure consisting of the district agreements provides machinery for the disposition of any disputes arising under the contract, and this machinery is believed available for disposition of any differences over the meaning of the provisions of the Welfare and Retirement Fund clauses in view of the fact that the differences between the Coal Mines Administration and the United Mine Workers are in general common to all mines in Government possession and control, this Administration is agreeable to the appointment of a mutually satisfactory umpire—preferably an outstanding jurist—to whom this dispute may be submitted for a determination to be applicable to all mines subject to the Agreement.

"It is regretted that the final position of this Administration
309 in these matters, particularly that dealing with the decisions of the arbitrator in Illinois, was delayed through circumstances beyond the control of either party pending the meeting between you and the Secretary, which was finally held on Saturday.

"The Coal Mines Administration wishes emphatically to reaffirm its position that at no time has it been in intentional violation of the Agreement of May 29, 1946, and that its interpretations of the Agreement have always been discussed with your representatives before being promulgated, and when promulgated over the objection of your representatives were only intended to serve as controlling guides to the operators—the grievance procedure for the settlement of disputes under the contract at all times having been open to the mine workers when they disagreed with the position taken by this Administration.

"Very truly yours,

"N. H. COLLISSON,
"Captain, USNR."

By Mr. HOPKINS:

Q. Captain Collisson, in that letter you adverted at least to
310 the matter of the difficulty of weighing the coal for the Health and Welfare Fund as set up under Section 4 (a) of the Krug-Lewis Agreement. I ask you, sir, has that not been a matter of major dispute as between representatives of the Mine Workers and the Coal Mines Administrator, both during the time you were Deputy Administrator and since that time since you have been the Administrator?

A. That is correct.

Q. And that dispute, sir, was outstanding and unresolved as of October 21, the date the ten-day notice was given to the Secretary of the Interior, is that not true, sir?

A. That is correct.

Q. And it is outstanding and unresolved today, is it not sir?

A. That is correct.

Q. And was a matter that was discussed with you and with your predecessor on many, many occasions, and with the Secretary of the Interior; is that not true, sir?

A. On numerous occasions. That is right.

Q. Captain Collisson, I understand that the Coal Mines Administration issued immediately after seizure on May 21, what was known as regulations or revised regulations for the operation of coal mines under Government control.

That is correct, sir, isn't?

311 A. Yes. I am not clear as to the date, but I would say it was shortly after——

Q. If the effective date proves it to be 12:01 A. M., July 8, 1946, you would not dispute that being the effective date of it?

A. I would not dispute it, no.

Q. Nor the fact that they were promulgated and put into effect and have been observed during the entire administration of the mines?

A. That is correct.

Q. Now, addressing my question to Section 5 of those revised rules and regulations, and I read from a copy submitted to me by the Coal Mines Administrator in due course of operation of the mines, I ask you this question:

312 Is it not true that those regulations provided in Section 5, among other things, that "the existing organization of the mining company will be utilized and the company will continue operation in the regular course of business as a going enterprise, conforming with such directions as the Government may issue."

Would you contest that rule or wording under Section 5 of the regulations?

A. Well, my memory is not good enough to confirm it, Mr. Hopkins, but it is not good enough to dispute it at all. If I might——

Q. Well, now——

The COURT. Just a minute.

The WITNESS. If I might refresh my memory——

The COURT. What did you say?

The WITNESS. Your Honor, if I might refresh my memory, I would be glad to pass upon it.

By Mr. HOPKINS:

Q. That, in general, however, sir, subject to your verification of the actual wording that I read, was the general program under which the Government operated?

A. That is correct, sir.

Q. And is it not true, sir, from the same Section 5, headed "Plan and Policy of Operations," is it not true that the Government operated in this fashion, and I again quote from the rule, "All properties in the possession of the Government shall be operated in a manner consistent with the fact that title to the properties remains in the owners thereof."

313

That was the way the Government operated, did it not?

A. That is correct, subject to the same reservations that I answered your other question.

Q. Yes. And is it not further true that under that same rule, that the "the Government having temporarily taken possession or custody will assert only such rights as are necessary to accomplish the national purpose of continued and maximum production."

What is the general rule under which you operated, was it not, sir?

A. Subject to the same reservations, it is, Mr. Hopkins.

Q. And I take it that if there is any change or modification that you would want to suggest in reference to this rule, you would be prepared Monday morning to bring a copy of the rules into court?

A. That is correct.

Q. And is it not true, Captain Collisson, that under Section 40 of the same rules and regulations, the Government operated under this provision as set out by the rules:

"None of the provisions of this section and no action that shall be taken pursuant to any of them, shall be deemed to constitute acquiescence of the Administrator in any claim that operations during the period of Government possession and control were for the financial account of the Government."

What is substantially true, is it not, sir?

A. What is correct, subject to the same reservation.

The Court. What reservation do you mean, sir?

The Witness. That I am not familiar, Your Honor, enough with the wording of that particular regulation to identify it.

The Court. I see.

Mr. Sonnett. It may, if the Court please, refresh the witness' recollection if I could show him a copy of these extensive regulations to which counsel refers.

I think he is talking about Section 4 of these regulations.

Mr. Hopkins. I would be delighted for him to have a copy of them in front of him at the time the query is made.

(The document was handed to the witness by Mr. Sonnett.)

By Mr. Hopkins:

Q. Now, Section 40, I believe, bears the title "Method of termination" under subsection "Termination of Government Control."

What is correct, is it not, on page 15, of your revised regulations?

A. That is correct.

Q. Now, may I ask you in connection with the previous question whether or not any profits have been made by the Government of the United States——

The Court. Any what, sir?

Mr. Hopkins. Any profits.

By Mr. Hopkins:

Q. Have been made by the Government of the United States or the Coal Mines Administration in the operation of these mines under Government seizure?

A. No.

Q. Is it not true, Captain Collisson, that all mines are being operated for private account?

A. Private account and risk.

Q. Is there to your knowledge any mine in Government possession today that is being operated for Government account?

A. None to my knowledge.

Q. And there has been none at any time since May 29?

A. Not to my knowledge.

Q. Now, turning to Section 23 (d) of the same revised rules and regulations, appearing on pages 6 and 7, particularly referring to subsection (d) on page 7, and reading from the last paragraph of subsection (d) on page 7:

316 "Nothing in these regulations shall be construed as recognizing such"—strike that, please.

Is it not true that the last paragraph under subsection (d) reads as follows:

"All personnel of the mines, both officers and employees, shall be called upon by Executive Order No. 9728 to serve the Government of the United States, but nothing in these regulations shall be construed as recognizing such personnel as officers and employees of the Federal Government within the meaning of the statutes relating to Federal employment."

Is that a correct quotation, sir?

A. With a minor change. Mine reads "shall be considered as called upon by the Executive Order" in the first sentence, Mr. Hopkins.

"Shall be considered as called upon."

Is that the way yours is?

You said, "shall be called upon."

Mr. HOPKINS. "Shall be considered" is the wording.

The WITNESS. Okay, then, that is a correct reading of that section.

By Mr. HOPKINS:

Q. Now, that is the way in which the Government operates and has operated all these mines?

A. That is correct.

317 Q. Since Government possession?

A. That is correct.

Q. The Coal Mines Administrator has never at any time looked upon the employees of the coal mining companies digging the coal as employees of the Coal Mines Administrator?

A. No, that is correct.

Q. The Coal Mines Administrator has not undertaken to furnish any workmen's compensation to any of these employees, have they?

A. No. We have directed that the operating managers furnish it, but not as a——

Q. And who pays the premiums for such coverage?

A. If they are paid, they are paid by the operating managers.

Q. And are not a charge against the Government, the premium?

A. Unless they were to make a claim against the Government, Mr. Hopkins.

Q. There have been no monies paid by the Government as yet for such premium?

A. No.

Q. Now, may I ask, has the Government paid out any monies for wages to these men since the seizure on May 21 under the Krug-Lewis Agreement of May 29?

A. No.

318 Q. Has the Government recognized, or has the Coal Mines Administrator recognized, any financial responsibility on the part of the Government to pay such wages?

A. No.

Q. Now, Captain Collisson, addressing yourself to the same page 7, under Section 24, title "Application of Federal and State Law" and reading from the last sentence of the first paragraph, does it not say:

"The companies are expected to meet all Federal, State and local taxes, contributions and assessments in the customary manner."

A. That is correct.

Q. Has the Government of the United States or the Coal Mines Administrator paid any taxes of any character since the possession of the mines was taken?

A. They have not.

Q. To any state, municipal or other taxing authority of the Government?

A. Not to the best of my knowledge.

Q. Now, may I ask you, sir, during your administration as Deputy Coal Mines Administrator and since your incumbency as the Administrator, has the Government of the United States undertaken to waive any Federal taxes due by any of the operating companies or properties under your seizure?

A. Not to the best of my knowledge.

319 Q. They have not?

A. They have not.

Q. Reading further from subsection—from the second paragraph of Section 24 on page 7:

"The mining companies are deemed to remain subject to suit as heretofore."

That is a correct excerpt from your existing regulations, is it not?

A. That is correct.

Q. To your knowledge, has the Government of the United States allowed itself to be sued or accepted service in any suit growing out of the operation of these mines under Government possession?

A. I am not clear on that point, Mr. Hopkins. We have received notices which would indicate that the company reserves its right to make claims against the Government.

Q. Yes. I speak of legal action, as such.

A. I know of no legal action, Mr. Hopkins, but it is a legal point that I am not qualified to speak on.

Q. Yes. That is the regulation and it has not been amended on that point?

A. No. You read the regulation correctly.

Q. Has the Government assumed, to your knowledge, the loss that has occurred from the operation of any mine under Government possession since May 29?

320 A. Not to my knowledge.

Q. If it had you would have known about it, would you not, sir?

A. I would.

Mr. SONNETT. What is your answer?

The WITNESS. I would.

By Mr. HOPKINS:

Q. Now, going back momentarily to the dispute which I believe you agreed with me was outstanding and unresolved from during June, July, August, September, and October, up to October 21, to wit, the manner of weighing the coal for the purposes of the Health and Welfare Fund, is it not a fact, sir, that that dispute grows out of the

interpretation of the wording in Section 4 (a), to wit; the words "produced for use or for sale"?

Mr. SONNETT. If the Court please, I think that counsel is asking the witness for a legal conclusion at this time.

The COURT. Ask the question over again, please. I want to hear it.

By Mr. HOPKINS:

Q. Is it not a fact, sir, that the dispute in reference to the weighing of the coal for the purposes of the Welfare Fund under Section 4 (a) stems out of a dispute between the Coal Mines Administrator and the mine workers as to the meaning of the words "produced for use or for sale"?

321 The COURT. The Court thinks that the witness ought to answer the question if he is able to.

Mr. HOPKINS. I think he is competent to answer it, Your Honor.

The WITNESS. I would be glad to answer it, Your Honor.

The COURT. Proceed.

The WITNESS. It does.

By Mr. HOPKINS:

Q. And that dispute involving that interpretation in wording of the contract has been long standing, has it not, Captain?

A. It has.

Q. And it is still outstanding and unresolved?

A. That is correct.

Q. And was as of the date of October 21, the date that the Secretary and yourself received notice of the reopening of this contract?

A. That is correct.

Q. Now, Captain, you adverted to certain meetings held by you and your associate from November 1 up to and including November 7 of this year with representatives of the United Mine Workers.

I should like to ask you, sir, was the Secretary of the Interior present on November 1?

A. He was not.

322 Q. Was he present on November 4?

A. He was not.

Q. Was he present on November 6?

A. He was not.

Q. Was he present on November 7?

A. He was not.

Q. He, I believe, in your testimony on direct, wired Mr. Lewis on or about October 22 that he would be out in Tule Lake, California, on November 1, the date sought for the meeting, and he also adverted to the fact that he could not be present until after November the 6th. After November the 6th, did he return to the city?

A. Meaning Washington?

Q. Yes.

A. Yes, sir, he did.

Q. But prior to that time is it not true, Captain Collisson, according to your own knowledge, that a wire was sent by Mr. Lewis to Secretary Krug, a copy of which was delivered to you, I believe, on October 28, that you adverted to indirect, in which it was said that "I esteem your telegram"—meaning the telegram that the Secretary

had sent to Mr. Lewis on the preceding day—"received by me today as a compliance with the request for official conference contained in my letter of October 21."

323 "Under these conditions the Krug-Lewis Agreement remains effective and unchanged during ensuing period of negotiation."

You were aware of that telegram at the time you met representatives of the Mine Workers on November 1, were you not?

A. I was.

Q. It is a fact, Captain, as a coincidence, that I was present during all those conferences, according to your recollection?

A. I believe you were, Mr. Hopkins; each meeting.

Q. And is it not correct, Captain Collisson, that a representative or representatives of the Mine Workers, upon initial meeting with you, sir, on November 1, stated clearly for the record that they were there in response—that they were there in response to their notice previously given to the Secretary of the Interior of October 21, to wit, for the purposes of renegotiating a new contract. That is correct, isn't it?

A. That is correct.

Q. And that was ofttimes repeated to you and your associates?

A. Many times during the conferences.

Q. Was there at any time an admission on the part or an inference, as you recall, on the part of the representatives of the Mine Workers that they did not stand upon their contractual right as set out

324 in Section 15 of the old agreement?

A. There is no inference noticed by me.

Q. Captain Collisson, when did Secretary of the Interior Krug first, according to your knowledge, meet with representatives of the Mine Workers subsequent to November 1? Was it not, sir, to refresh your memory, on November 11?

A. Oh, subsequent to. Excuse me. Yes, November 11.

Q. And you were present at that time?

A. I was present, yes.

Q. How long did that conference continue? How much time was consumed in it?

A. On November 11?

Q. Yes, sir.

A. I would say maybe an hour or an hour and a half. I am not clear, Mr. Hopkins.

325 Q. Is it not a fact that at that time definitive suggestions for new provisions in the contract were submitted by representatives of the mine workers in your presence?

Mr. SONNETT. If the Court please, I object to that question as being beyond the scope of the direct examination. Counsel is now making the Captain his witness. If he is content to do so, I am content.

The COURT. How is that, sir? You object to it on the ground that it is not cross-examination?

Mr. SONNETT. On the ground that it is beyond the scope of the direct examination. The Government elicited no testimony from this witness concerning any meeting which he attended after November 7, 1946. Counsel is now directing his inquiry to meetings of November 11 and thereafter.

Mr. HOPKINS. We submit that it is proper cross-examination.

The COURT. The Court overrules the objection. Proceed.

By Mr. HOPKINS:

Q. That meeting on November 11, being the first, as I understand you to testify, that the Secretary of the Interior had attended, lasted for about an hour or an hour and a half?

A. That is my recollection.

Q. Is it not true also that at the same meeting, when you were present, definitive suggestions as to terms and conditions, hours and wages, and matters of employment were presented by repre-
326 sentatives of the mine workers to the Coal Mines Administrator?

A. That is correct.

Q. Is it not correct, sir, that that meeting on that evening recessed for the purpose, or one of the purposes, of allowing the Coal Mines Administrator to consider the merits or demerits of those proposals?

A. That is correct.

Q. And that they were considered by the Secretary of the Interior, yourself, and your associates, and the Coal Mines Administrator, that night and the following morning?

A. I don't recall that night, but certainly the following morning.

Q. Is it not true, sir, that you requested an extended recess of that conference beyond the hour that had originally been set for it to convene on November 12?

A. No; I think the Secretary of the Interior made the request.

Q. How long did the meeting last, then, when it reconvened on November 12?

A. It is my recollection that it convened at around 2 o'clock in the afternoon, and I would say recessed within an hour and a half again. That is my estimate.

Q. Was that the last group meeting between the Secretary of the Interior and yourself and your representatives, and the mine workers?

327 A. That is correct. Between those parties mentioned, that was the last time.

Q. As a matter of fact, that did not last more than 15 minutes, did it, Captain?

A. I thought it lasted longer, Mr. Hopkins, but it is an estimate on my part.

Q. To refresh your recollection, isn't that the one which was recessed by the representatives of the mine workers, saying in substance "If that is your position, then we have no further reply to make"?

A. That is correct, but I would have thought it lasted longer than that.

The COURT. That what was your position? What do you refer to?

Mr. HOPKINS. The duration of the meeting of November 12, attended by the witness, the Secretary of the Interior, and representatives of the mine workers, to discuss the questions involved in the making of a new contract involving wages, hours, and working conditions. I want to develop the time that was involved or contained in those meetings.

The COURT. You asked if the representatives of the mine workers had not said to the Secretary of the Interior, "That is your position? If that is your position, we have no more to say," or words to that effect?

Mr. HOPKINS. I think it was upon that note that the
328 meeting adjourned.

The COURT. What did he mean by, "If that is your position?" What are you referring to?

Mr. HOPKINS. Well, I do not want to undertake to be a witness myself, your Honor, but to refresh the witness' recollection——

The COURT. Ask him.

By Mr. HOPKINS:

Q. When the meeting reconvened on November 12, is it not your recollection, sir, that the Secretary of the Interior came in with certain counterproposals to those that had been previously submitted by the Mine Workers?

A. That is correct.

Q. And those proposals to settle the disputes that were existing were unacceptable to the mine workers in that meeting of November 12?

The COURT. That clarifies it.

The WITNESS. They so said that they were not acceptable.

By Mr. HOPKINS:

Q. Again, I refresh your recollection: Didn't that meeting last less than 30 minutes, and probably more nearly 15?

A. It may have, Mr. Hopkins.

Q. Were there any other meetings, Captain, that you at-
329 tended, after November 12, between the representatives of the Mine Workers and the representatives of the Coal Mines Administration?

A. None after that last meeting.

Q. On November 12——

A. (The witness nodded his head.)

Mr. HOPKINS. Pardon me. will you indulge us momentarily?

(Mr. Hopkins conferred with associate counsel.)

By Mr. HOPKINS:

Q. You adverted in your direct examination, Captain, to certain meetings of September 12 or 13, or thereabouts, of this year between the Mine Workers' representatives and the representatives of the private operators or the private owners. What were the exact dates, if you recall?

A. My memory indicates they were September 11 and 13.

Q. The two meetings were on the respective dates of the 11th and 13th, with a day's interval between, in which there was no meeting?

A. That is to the best of my recollection.

Q. Who called that conference or meeting?

A. The Coal Mines Administrator, Admiral Ben Morcell.

Q. It was at his invitation, in his capacity as Coal Mines Administrator, that such meeting was convened between representatives of the operators and of the miners?

A. That is right.

Q. Where was it held?

330 A. In the Secretary's conference room in the Interior Department.

Q. Do you recall, sir, or put it this way: Is it not correct that when that meeting convened, Admiral Moreell in his role and in his official capacity as Coal Mines Administrator made certain precise

proposals to the operators for settlement of the dispute existing between them and the mine workers?

A. Well, I think he made certain precise proposals to both parties assembled, not just to the operators.

Q. To the operators and the miners to settle the dispute that existed between them?

A. That is correct—suggestions.

Q. That was on September 11, the first day of the meeting?

A. That is correct.

331 Q. Refreshing your recollection, for I believe I was again present at that meeting, and so were you, after some discussion, was it not recessed for the purpose of allowing the operators to make certain examination of the proposals submitted by the then Coal Mines Administrator to settle and resolve the dispute? Isn't that correct, sir?

A. That is correct.

Q. Is it not true, sir, again refreshing your recollection, that the operators on the following morning requested the Admiral and the mine workers to postpone a reconvening of that conference until they could further look into the merits or the demerits of the proposals as made by Admiral Morrell to settle this labor dispute?

A. That is correct. On the morning of the 12th, which was the next day after the original meeting, they made such a request.

Q. And they reconvened on the 13th, did they not, Admiral?

A. That is correct.

Q. Is it not correct that at that time the operators replied in two parts, one part being an answer which came from the so-called northern group, and the other part coming from the so-called southern group? Isn't that correct, sir?

A. That is correct; their positions were not the same.

Q. Is it not correct that Mr. Charles O'Neill, speaking
332 for the northern operators, presented a paper outlining his reactions to the proposals to settle that labor dispute?

A. That is correct.

Q. Is it not true also that former Senator Burke of Nebraska, or formerly of Nebraska, speaking for the so-called southern group——

The COURT. Senator Burke, you say?

Mr. HOPKINS. Burke—former Senator Burke.

By Mr. HOPKINS:

Q. (Continuing) presented a paper or statement in which he set out the views of the southern coal operators, that were calculated to resolve, in reference to the proposals as submitted by Admiral Morrell—to resolve this labor dispute? That is correct, is it not?

A. That is correct.

Q. It is correct, is it not, sir, that in the major points involved, Senator Burke's group differed, and differed diametrically, from the position as announced by Mr. O'Neill in behalf of the northern operators?

A. My memory indicates that Senator Burke's proposal differed on three major points with those of the northern operators as represented by Mr. O'Neill.

Q. Very good, sir, is it not true in substance, then, that thereafter Admiral Moreell, the caller of this meeting and the presiding
333 officer at that time, suggested that he did not want that conference to be adjourned; that he wanted it to be recessed? That is correct, isn't it?

A. That is correct.

Q. Was it not his stated purpose, as you recall it, in so requesting that it be recessed rather than adjourned, that he wanted to hold it open in order that his proposal to settle that labor dispute might be further considered at a later date?

A. Yes; I think, however, the real reason for the recess was the request of Mr. Lewis, namely, that such a split, if that is understandable, in the proposals submitted by the two factions of the operators constituted a policy matter that he, Mr. Lewis, would have to get the instructions on from his membership, they convening shortly thereafter in national convention in Atlantic City. I believe it was for that purpose, Mr. Hopkins, that the meeting was recessed.

The Court. We will suspend at this point. It is understood that the Captain will bring with him on Monday morning the exhibits which you have requested, so that there will be no delay at that time.

The Witness. Yes, sir.

(At 5:03 p. m. an adjournment was taken until Monday, December 2, 1946, at 10 a. m.)

334 In the District Court of the United States for the District of Columbia

Holding a Motions Court

Civil Action No. 37764

United States of America, plaintiff,

vs.

United Mine Workers of America, an Unincorporated Association, and John L. Lewis, Individually and as President of the United Mine Workers of America, defendants.

Washington, D. C., *December 2, 1946.*

The above-entitled cause came on for further hearing on a rule to show cause why the defendants should not be adjudged in contempt of court, before Hon. T. Alan Goldsborough, Associate Justice, at 10:00 o'clock a. m.

Appearances:

On behalf of the Government: John F. Sonnett, Assistant Attorney General; John Ford Baecher, Special Assistant to the Attorney General; Joseph M. Friedman, Special Assistant to the Attorney General; J. Francis Hayden, Special Assistant to the Attorney
335 General; Robert L. Werner, Special Assistant to the Attorney General; George Morris Fay, United States Attorney, District of Columbia.

On behalf of the Defendants: Welly K. Hopkins, 900 15th Street NW.; Edmund Burke, Springfield, Illinois; T. C. Townsend, Charles-

ton; West Virginia; HARRISON COMBS, 900 15th Street NW.; JOSEPH A. PADWAY, 738 Bowen Building; HENRY KAISER, 736 Bowen Building; JAMES A. GLENN, 736 Bowen Building.

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PROCEEDINGS

Mr. SONNETT. If the Court please, the Court will recall that at all times it has been the Government's position in this matter that every opportunity should be furnished to the defendants to present fully any defense which they think they may have.

For this reason I advise counsel for the defendants prior to the commencement of the hearing on Friday, November 29, 1946, that the Government's first witness would be Captain Collisson.

The Government now desires to inform the Court and the defendants that it is presently the intention of the Government to call as its remaining witnesses the following: I have them listed, and will submit a copy of the list to the Court and read the names.

Captain N. H. Collisson, U. S. N. R., Coal Mines Administrator, Department of the Interior.

Mr. Alfred Oeth, Paramount News, Washington, D. C.

Mr. Joseph A. Genau, Special Agent, FBI.

Lt. Commander Hamilton Acheson, Coal Mines Administrator, Iowa Subarea Office.

Lt. Commander R. H. Behnke, Coal Mines Administrator, Fairmont, West Virginia, Area 1.

337 Mr. Briggs M. Rogers, General Superintendent, DeBardeleben Coal Corporation, Sipsey, Alabama.

Lt. Ralph N. Ciaiola, Coal Mines Administration Representative, Subarea Office, Uniontown, Pennsylvania.

Dr. Glenn L. Parker, Chief, Prices and Markets Subsection, Coal Economics Division, Bureau of Mines, Department of the interior.

Dr. Philip Hauser, Assistant to the Secretary of Commerce.

Mr. George Haas, Director of Research and Statistics, Treasury Department.

Secretary of the Interior Krug.

Mr. HOPKINS. Are you ready for us to proceed, Your Honor?

The COURT. Yes, proceed.

Thereupon—

Captain N. H. COLLISSON resumed the stand and testified further as follows:

CROSS-EXAMINATION—resumed

By Mr. HOPKINS:

Q. Captain Collisson, I believe when Court recessed on Friday evening last, defense counsel had asked some questions in reference to Government's Exhibits 16, 17, and 18, together with whether or
338 not there had been any correspondence as between the Coal Mines Administration and the War Stabilization Board in reference to those three exhibits. You were to look through your files and see.

Have you this morning found any communications from Coal Mines Administration to the War Stabilization Board or any reply thereto in reference to Government's Exhibit 16?

A. I have correspondence relative to those three exhibits. Mr. Hopkins. I do not recall the numbers of the exhibits, so if——

Q. Exhibit 16, I believe, dealt with the matter of modifying the vacation period.

A. That is the Fourth of July vacation period?

Q. Yes, sir; the Government's Exhibit No. 16 being dated June 12, 1946, a memorandum of agreement between the Coal Mines Administrator and the Mine Workers affecting modification of Clause 7 of the National Bituminous Coal Wage Agreement.

Do you have correspondence either to or from the Wage Stabilization Board in reference to that?

A. There is no correspondence with reference to Government Exhibit 16 for the reason that a paragraph in the Wage Stabilization Board's order approving the Krug-Lewis Agreement carries forward the statement that whether or not the men worked the ten days
339 or elected to work a shorter time than those ten days, is of no concern to the Board. That Wage Stabilization Board order is already an exhibit.

Q. Now, I understand the memorandum of June 12, to wit, Government's Exhibit 16, which is a modification of Clause 7 of the National Wage Agreement, was not submitted to the Wage Stabilization Board after its execution on June 12?

A. It was not.

Q. With reference to Government's Exhibit 17, having to do with Section 4 (a) of the Krug-Lewis Agreement, to wit, the Welfare and Retirement Fund and the appointment of a custodian thereunder,

I believe you stated on yesterday that there may have been correspondence between the Coal Mines Administration and the Wage Stabilization Board in reference to that exhibit.

Do you find any, sir?

A. I do.

Mr. HOPKINS. May I see them, please?

You can just hand them down through the Clerk.

(Thereupon, the documents were handed to Mr. Hopkins.)

Mr. HOPKINS. If the Court please, may we have a moment to see just what the character of the documents are?

The COURT. Certainly.

340 Mr. HOPKINS. If the Court please, the witness has presented to defense counsel copies of three communications: One dated June 27, 1946, addressed to the Vice Chairman of the Wage Stabilization Board, signed by Admiral Ben Moreell; a copy of a communication dated July 1, 1946, to Mr. William Wirtz, chairman of the Wage Stabilization Board, from Mr. Randall Compton, General Counsel, Coal Mines Administration; and a copy of a letter addressed to Admiral Ben Moreell, dated July 3, 1946, from Mr. Garman, Vice Chairman of the Wage Stabilization Board.

They appear to pertain to the Government exhibit under question, to wit, Government Exhibit No. 17. They indicate upon their face that on June 27 the Admiral communicated to the Board the execution of this memorandum of June 27, and on July 1 again indicated the same thing to the chairman through the Admiral's counsel, Mr. Compton, and the Board's reply.

We think that they are in response to the request that defense counsel made of the witness on Friday, and offer them as Defendants' Exhibits 2, 3, and 4. We submit them to Government counsel, if they desire them. I suppose they are familiar with them.

Mr. SONNETT. I have not seen them, if the Court please, but I join in the offer.

Mr. HOPKINS. Then, we offer them in the record.

341 (Defendants' Exhibits 2, 3, and 4, above described, were received in evidence.)

By Mr. HOPKINS:

Q. In reference, Captain Collisson, to Government Exhibit 18, was there any correspondence between the Coal Mines Administration and the Board in reference to that document?

A. Government Exhibit 18, as I recall it, had to do with the appointment of a custodian in lieu of trustees for the 4–B Fund, is that correct?

Q. This is in reference to section 4–B of the Krug-Lewis Agreement; that is correct, sir; in reference to the fines and penalties that were referred to in section 10 of the Krug-Lewis Agreement.

A. No; there is no correspondence, no application, or no answer from the Wage Stabilization Board on that point. The trustees for that fund—the 4–B Fund—were, in accordance with the Krug-Lewis Agreement, to be selected by the United Mine Workers. There was no concurrence nor any approval required from the United States Government, and therefore we felt that that was not a change in terms and conditions of employment but something that was entirely within

the rights of the United Mine Workers if they elected to have a trustee in lieu of or a custodian in lieu of a trustee.

Q. Then, it is correct to say, Captain, that that memorandum
342 Government's Exhibit 18, dealing with section 4–B and section 10 of the Krug-Lewis Agreement, for the reasons you have stated, was not submitted to the Wage Stabilization Board?

A. That is correct.

Q. I believe I made inquiry of you also in reference to the matter of the pro rata vacation payment dispute that had existed between the Coal Mines Administrator and the mine workers, which you resolved, as I recall under your testimony, by your letter of October 21, 1946, addressed to the mine workers. In reference to that, sir, I believe the question was asked whether you had submitted it to the Wage Stabilization Board. Do you have any communication bearing upon it?

A. I believe I answered, Mr. Hopkins, that I knew that one we had submitted, and I do have communications from the Coal Mines Administration to the Board and the Board's answer.

Q. May I see them, please?

(The witness handed papers to Mr. Hopkins.)

343 Mr. HOPKINS. If the Court please, the witness has presented to defendants' counsel copy of communication dated October 22, 1946, addressed to the Chairman of the Wage Stabilization Board, and signed by the witness in his capacity as Coal Mines Administrator, bearing upon the letter of October 21 previously alluded to by the witness as having been written by him to the defendant Lewis and the Mine Workers.

We were likewise presented with a copy of reply from the Wage Stabilization Board to the witness, Captain Collisson, under date October 30, 1946, signed by W. Willard Wirtz, Chairman of the Board.

We propose to offer them in evidence and submit them to Government counsel. I believe they would be Defendants' Exhibits 5 and 6.

Mr. SONNETT. The Government joins in the offer, if the Court please.

Mr. HOPKINS. Would you hand them to the witness, please?

(Defendants' Exhibits 5 and 6 handed to the witness.)

By Mr. HOPKINS:

Q. Captain Collisson, would you for the record read the two letters in chronological order into the record?

344 (Copy of letter dated October 22, 1946, from Captain Collisson to Willard Wirtz, Chairman, National Wage Stabilization Board, marked "Defendants' Exhibit No. 5" and received in evidence.)

(Copy of letter dated October 30, 1946, from W. Willard Wirtz to Captain Collisson, marked "Defendants' Exhibit No. 6," and received in evidence.)

A. Defendants' Exhibit No. 5 is a copy of a letter from the Coal Mines Administrator dated October 22, 1946, to Hon. Willard Wirtz, Chairman, National Wage Stabilization Board, Washington, D. C., and it reads:

"MY DEAR MR. WIRTZ: By your Board's order of May 31, 1946, certain changes in terms and conditions of employment in certain bituminous coal mines were ordered, including the provisions for vacation payments contained in the Krug-Lewis agreement of May

29, 1946. In approving the paragraph of Section 7 of the agreement dealing with prorata vacation payments, your Board provided that any interpretative rules governing the making of pro-rata payments should be submitted to your Board for such further consideration and action as may be appropriate under Section 5 of the War Labor Disputes Act.

345 "Under date of June 7, this Administration submitted to your Board a proposed interpretation limiting the pro rata application of vacation pay to a full calendar month, or months, and included persons who were discharged for cause.

"Under date of June 12, the then Vice Chairman of your Board requested certain additional information before passing upon the proposed interpretation. In reply to this letter, this Administration advised Mr. Day, among other things, that under the proposed interpretation the pro rata payments would not apply to an employee who was not on the payroll of a mine at the time of Government possession under the authority of Executive Order 9728.

"Under date of June 20, you advised me that your Board voted, industry dissenting, that no further action was required with respect to the interpretation of prorated vacation payments under Section 5 of the War Labor Disputes Act. Subsequently, this Administration issued its Interpretative Bulletin No. 5, in which it took the position that the Krug-Lewis agreement applied, by its terms, to the period of Government possession and does not, except where specifically so provided, change or modify the obligations of an employer to an employee which were completed and fully accrued prior to the date of government possession and that its provision regarding pro rata

346 vacation payments have no application to persons who were not on the pay roll during the period of Government possession and operation. The United Mine Workers' representatives protested this interpretation of the contract on the ground that it does not reflect the clear meaning of the contract provision.

"Under this interpretative bulletin, coal mining companies whose mines are in the possession and control of the Government have refused to pay pro rata vacation payments to employees who left the employ of the company prior to Government possession.

"As a result, certain mine workers brought up cases for adjudication under the grievance procedure provided for in district agreements and other agreements which were carried foward and preserved by Section 1 of the Krug-Lewis agreement and constitute part of the contractual relationship between the Coal Mines Administrator and the United Mine Workers.

"Several of these cases have now proceeded through the final step of arbitration under the Illinois District Agreement and the arbitrator has ruled that Interpretative Bulletin No. 5 does not carry out the provisions of the Krug-Lewis agreement and has allowed a pro rata vacation payment to miners whose employment was terminated

347 some months prior to the period of Government possession and operation and who did not return to the employ of the same company during Government operation.

"The Coal Mines Administrator feels that he is bound by decisions arrived at in accordance with the grievance procedure contained in the underlying contract structure revived and carried forward by the

Krug-Lewis agreement and that, in the case of the arbitrator's decisions referred to above, such decisions are final and conclusive under the contract.

"This matter is being called to your Board's attention because of the correspondence referred to above and the provision contained in your Board's order of May 31, also referred to above.

"Will you kindly advise me at once of any position which your Board feels it should take in the premises?"

Defendants' Exhibit 6 is copy of letter from Wage Stabilization Board, Washington, D. C., dated October 30, 1946, and addressed to Captain N. H. Collisson, Coal Mines Administrator, Washington, D. C., and reads as follows:

"This will acknowledge receipt of your communication of October 22 concerning your intention to revise interpretation of rules governing pro rata vacation payments as referred to in the Board's order dated May 31 ordering certain changes in wages and terms and conditions in bituminous coal mines provided in the Krug-Lewis agreement of May 29.

"On October 30, 1946, the Board voted, industry dissenting, to inform you that no further action is required with regard to this matter under Section 5 of the War Labor Disputes Act."

By Mr. Hoskins:

Q. Now, Captain Collisson, in my cross-examination of you in part on Friday, we were adverting to certain meetings held beginning November 11 through November 13 of this year at which time Secretary Krug was present and you were likewise present. I think I inadvertently, perhaps, made a mistake as to one of the dates and I want to ask you to correct it if I was in error in that regard; to this extent: I adverted to meetings held between the parties on November 12. They were really held on November 13 after a day's recess between the 11th and the 13th. Is that correct, sir?

A. That is correct and I think I likewise made a mistake in my testimony in agreeing with you.

Mr. Hoskins. That was just for the purposes of the record, Your Honor, to clarify the dates of the meetings.

By Mr. Hoskins:

Q. Now, Captain Collisson, the meetings that convened on November 11 and were attended that day by representatives of both parties, and on the 13th, is it not a fact that the representatives of the Mine Workers on those two several dates, to wit, the 11th and the 13th, were composed of a negotiating committee of the Mine Workers, that is, their district presidents, who participated in the conference. That is correct, is it not?

A. Was attended by the district presidents. I am not clear whether that is their negotiating committee or not.

Q. There were some several in number, were there not?

A. That is correct.

Q. Now, Captain, one more question in reference to your letter of October 21, 1946, addressed to Mr. Lewis, to which we have previously adverted and which is in the record. I think it is Defendant's Exhibit N 1.

I read to you the first paragraph and then I should like to ask you a question based thereon.

After addressing Mr. Lewis on that date, you say:

"Secretary Krug has requested that I write to you with respect to the position of the Coal Mines Administration on two of the matters which were discussed with you at your meeting with him Saurday, October 19; namely, the pro rata retroactive vacation pay and measurement of tonnage to which five cents per ton for the Welfare and Retirement Fund is being applied."

That is a correct quote from your letter, is it not?

A. Yes.

Q. It is correct to say, then, is it not, that you were cognizant as of the time of the writing of this letter of October 21 that those two
351 points were in dipute as between Mr. Lewis and Secretary Krug as indicated in your statement adverting to their meeting of October 19, the Saturday previous?

A. That is correct.

Mr. HOPKINS. You may take the witness. I believe that completes our cross, Your Honor.

Mr. SONNETT. If the Court please, I will ask the Clerk to mark this document that I hand him Government's Exhibit No. 26 for identification.

(Thereupon, the document referred to was marked "Government's Exhibit No. 26" for Identification.)

Mr. SONNETT. If the Court please, I offer in evidence Government's Exhibit No. 26 which is a certified copy of a document entitled "Revised Regulations for the Operation of Coal Mines under Government Control."

Mr. HOPKINS. To which we offer no objection.

The COURT. Very well.

(Thereupon, Government's Exhibit No. 26 for Identification was received in evidence.)

REDIRECT EXAMINATION

By Mr. SONNETT:

Q. Captain, referring to Government's Exhibit No. 26, would you read the table of contents of that document.

352 A. Table of Contents, contained on page 1 of Government's Exhibit No. 26, reads as follows:

"TABLE OF CONTENTS

I. GENERAL:
- 1. Authority for Regulations.
- 2. Scope of Regulations.
- 3. Effect of Regulations.
- 4. Purpose of Operation.
- 5. Plan and Policy of Operation.
- 6. Definitions.

II. ORGANIZATION FOR OPERATION:
- 10. Supervision and Direction.
- 11. Designation of Area Officers-in-Charge.
- 12. Duties of Area Officers-in-Charge.

13. Designation of Advisory Councils.
14. Duties of Advisory Councils.
15. Designation of Operating Managers.
16. Status of Operating Managers.
17. Duties of Operating Managers.

III. Operation of Mines:

20. Statement of Property Taken.
21. Accounts and Records.
22. Financial and Commercial Transactions.
23. Employment.
    (a) Working conditions.
    (b) Collective bargaining.
353 (c) Employment benefits.
    (d) Personnel.
24. Application of Federal and State Law.
25. Interim Procedure for Confirmation of Financial Responsibility of Mining Company.
    (a) Execution and delivery of Instrument of Agreement and Certification.
    (b) Effect of Such Instrument.
    (c) Reservation of Right to Assert Claims, etc.
    (d) Termination of Effectiveness of Instrument.
    (e) Nonacquiescence of Liability, etc.
    (f) Inapplicability of Certain Provisions of Section 40.
    (g) Furnishing Information and Compliance.
26. Requirements as to Financial Transactions and Current Accounting.

IV. Enforcement of Regulations and Orders:

30. Enforcement Powers of Area Officers-in-Charge.
31. Removal of Operating Managers.
32. Use of Military Force.

V. Termination of Government Control:

40. Methods of Termination.

VI. 50. Regulations Superseded; Exceptions."

Q. Captain, referring to the document before you, will you please read paragraphs 1 to 5, inclusive?

A. Under Roman I, General?

Q. Yes, Arabic paragraphs 1 to 5, inclusive.

A. "General, 1. Authority for Regulations.

"These regulations are issued under authority of Executive Order No. 9728, dated May 21, 1946 (11 F. R. 5593), authorizing and directing the Secretary of the Interior

"'to take possession of any and all such mines, and, to the extent that he may deem necessary, of any real or personal property, franchises, rights, facilities, funds, and other assets used in connection with the operation of such mines; to operate or to arrange for the operation of such mines in such manner as he may deem necessary in the interest of the war effort; and to do all things necessary for, or incidental to, the production, sale, and distribution of the coal produced, prepared, or handled by the said mines.'"

Paragraph 2 reads:

"Scope of Regulations.

"These regulations shall govern the operation of all coal mines placed under Government possession and control pursuant to Executive Order No. 9728, including any and all real and personal property, franchises, rights, facilities, funds, and other assets used in connection with the operation of such mines and the distribution and
355 sale of their products, for operation by the United States."

Paragraph 3:

"3. Effect of Regulations.

"These regulations shall supersede all prior orders or instructions governing the operation of such coal mines to the extent that such orders or instructions are inconsistent with these regulations. (See Section 50 infra as to superseding regulations heretofore in effect.)"

Paragraph 4 reads:

"Purpose of Operation.

"The primary object of Government intervention in the operation of the said properties is the maintenance of full production in the interest of the war effort, the continued operation of the national economy during the transition from war to peace, and the preservation of the national economic structure in the present emergency. All duties and authorities set forth in these regulations are to be construed in the light of this purpose, and if any regulation interferes with the accomplishment of this purpose, prompt application must be made to the Coal Mines Administration to secure the waiver or modification of such regulation.

"5. Plan and Policy of Operation.

"Control of the operations of the coal mines will be exercised by the Government to the extent necessary to maintain maximum pro-
356 duction. Wherever the cooperation of the company and its personnel can be secured, the existing organization of the mining company will be utilized, and the company will continue operation in the regular course of business as a going enterprise, conforming with such directions as the Government may issue. Where the prompt and effective cooperation of the company cannot be secured, appropriate action will be taken under Sections 30 and 31 of these regulations, or otherwise.

"All properties in the possession of the Government shall be operated in a manner consistent with the fact that title to the properties remains in the owners thereof and that the Government, having temporarily taken possession or custody, will assert only such rights as are necessary to accomplish the national purpose of continued and maximum production."

Q. Will you now read paragraph 10 of the regulations?

A. "Organization for Operation.

"Supervision and Direction.

"The power, authority, and discretion of the Secretary of the Interior with respect to the operation of the coal mines may, under the authority of Order No. 2199 of the Secretary of the Interior, dated May 21, 1946 (11 F. R. 5604), the exercise by the Coal Mines Administrator and by the Deputy Coal Mines Administrator (both hereinafter referred to as the Administrator), to the same extent and with the same effect as such power, authority, and discretion may be
357 exercised by the Secretary of the Interior. The power, authority, and discretion of the Administrator may be exercised

through such personnel of the Coal Mines Administration of the Department of the Interior and in such manner as the Administrator may determine."

Q. Now, will you read, please, paragraph 15 of the exhibit?

A. Paragraph 15:

"Designation of Operating Managers.

"The operation of the coal mines of a mining company will ordinarily be entrusted to an officer of the company formerly in charge of operations who is authorized to act for the said company and who will, under appointment of the Administrator, during the period of Government control, act as Operating Manager for the United States, while continuing to serve as an officer and employee of the mining company. At the request of the said company such person may be removed from the position of Operating Manager for the United States, and an officer or employee of the company nominated by the company may be appointed by the Administrator.

"Where the prompt and effective cooperation of the mining company in the operation of the coal mines under Government control cannot be secured, a person other than an officer or employee of the company may be designated as the Operating Manager for the United States by the Administrator.

358 "Where a company is in receivership or trusteeship the receiver or trustee will ordinarily be designated as Operating Manager for the United States."

Q. Now, will you read paragraph 16, please?

A. Paragraph 16:

"Status of Operating Managers.

"Any officer or employee of a mining company who, with the permission of, or without objection from the said company, accepts a designation as Operating Manager for the United States of the coal mines of said company shall, together with all other officers and employees, serve in full recognition of his responsibilities to the Government and subject to all orders and regulations of the Administrator, but he and all other officers and employees shall serve as agents and employees of the company with respect to all actions which they would have been empowered to take on behalf of the company in the absence of Government control of its property.

"The Operating Manager shall continue to be subject to all restrictions and limitations imposed by the company upon his exercise of his authority. In respect of any action to which or in which the company requires its special consent or concurrence, the Operating Manager shall obtain such consent or concurrence before he takes such action. If consent is denied, the Operating Manager shall so report to the Area Officer in Charge, stating the circumstances of the

359 denial The Area Officer in Charge shall transmit the report to the Administrator, and the Operating Manager may proceed to take the action in question only upon direction of the Administrator.

"Designation of any person as Operating Manager for the United States shall not be deemed to constitute him as officer or employee of the United States within the meaning of Federal statutes governing personnel.

"The appointment of any Operating Manager shall terminate at the discretion of the Administrator upon notice to the Operating Manager."

Q. Will you read paragraph 17, please?

A. Paragraph 17:

"Duties of Operating Managers.

"Operating Managers shall perform for their companies ordinary duties of management in accordance with established policies and practices, so far as consistent with these regulations and the instructions and orders of the Administrator and Area Officer in Charge and shall in addition perform all special duties placed on them as Operating Managers of the United States by these regulations, by their appointment instructions, so far as consistent with these regulations, and by such orders as the Administrator or the Area Officer in Charge may issue.

"An Operating Manager is authorized to take all necessary action in the manner in which and through the officials by
360 which it has been customarily accomplished and may, as should be necessary and convenient, take action either under his customary title and designation or as 'Operating Manager for the United States (name of company),' as hereinabove and hereinafter specified. No Operating Manager for the United States of any mining company is authorized or shall be regarded as having authority, express or implied, to bind or impose any liability on the United States or any of its officials or agents in the absence of a specific direction or order by the Administrator to that effect. Nor shall any operations of any mine property in the possession and control of the Government, or the proceeds, earnings, or liabilities of such mine property in any event be, or be regarded as being, for the account or at the risk or expense of the Government except as a specific written direction or order to that effect shall have been given by the Administrator.

361 Q. Will you refer to Paragraph 30, at page 14, and read that, please?

A. Paragraph 30, "Enforcement Powers of Area Officers in Charge.

"In any case where the prompt and effective cooperation of a mining company cannot be secured, the Area Officer in Charge may issue appropriate instructions for the operation of the coal mines of such company and shall immediately report the circumstances and his instructions to the Administrator. Pending receipt of directions from the Administrator, it shall be the duty of the Area Officer in Charge to deny access to the premises to persons not contributing to the operation of the enterprise, to prevent any interference with the coal mines or the operations under Government control, and to see that the production of coal is continued."

Q. Paragraph 31, now, please, Captain.

A. Paragraph 31, Removal of Operating Managers.

"Upon failure of an Operating Manager to comply with these regulations or the orders of the Administrator or the Area Officer in Charge or upon failure of a mining company to respect the action taken by its Operating Manager who is an official of the Company, the Area Officer in Charge shall report to the Administrator the desira-
362 bility of the removal of the Operating Manager, with such recommendations for a substitute as he may wish to make."

Q. Now, finally, Paragraph 32, Captain.

A. "Use of Military Force.

"Any request for the use of the armed forces of the United States to protect life or property in connection with the operation of any mine under the control of the United States shall be submitted by the Operating Manager in charge of the mine, or his representative, to the Area Officer-in-Charge, who shall promptly transmit it with his recommendation to the liaison officer designated by the Secretary of War for the district in question and, in those cases where it is the first time such request has been made in the area, to the Administrator, for decision as to whether a request for such protection shall be submitted to the Secretary of War pursuant to the provisions of Executive Order No. 9728. Area Officers-in-Charge are authorized, except in those cases where it is the first time such request has been made in the area, to request the use of armed forces from the United States Army through the liaison officer assigned to the area. No Operating Manager shall have authority to make a request for military protection directly to any officer of the War Department or of the United States Army."

363 Q. Captain, referring to Government's Exhibit 13, which is alongside of you, the Krug-Lewis agreement, will you examine Section 2 and read the title of that section?

A. Section 2 of Government's Exhibit 13 is entitled "Mine Safety Program."

Q. And subsection (a)?

A. Subsection (a) under Section 2 is entitled "Federal Mine Safety Code."

Q. That provision of the Krug-Lewis agreement contained in paragraph 2, Captain, was approved by the Wage Stabilization Board in the order of May 31, 1946, was it not?

A. That is correct.

Q. Had such a Federal Mine Safety Code existed in the mines prior to the Krug-Lewis agreement?

A. It had not.

Mr. SONNETT. Will you mark these documents for identification as "Government's Exhibit No. 28.")

(Copy of Order No. CMAN-2, marked for identification "Government's Exhibit No. 27.")

(Copy, in booklet form, of the Federal Mine Safety Code for Bituminous Coal and Lignite Mines, marked for identification as "Government's Exhibit No. 28.")

By Mr. SONNETT:

364 Q. Captain, I show you Government's Exhibit 27 and Government's Exhibit 28. Can you identify what those documents are?

A. Government's Exhibit 27 is a copy of Order No. CMAN-2, of the Coal Mines Administration, and the subject of this order is to provide for an interim safety code pending the preparation of the Federal Mines Safety Code.

Q. And what is Government's Exhibit 28, Captain?

A. Government's Exhibit 28 is a copy in booklet form of the Federal Mine Safety Code for Bituminous Coal and Lignite Mines of the United States, and is dated July 24, 1946, and is the code described in Section 2 of the Krug-Lewis agreement of May 29, 1946.

Mr. SONNETT. I offer in evidence Government's Exhibits 27 and 28.

Mr. HOPKINS. To which we offer no objection, Your Honor.

(The documents heretofore marked for identification as "Government's Exhibits Nos. 27 and 28" were thereupon received in evidence.)

By Mr. SONNETT:

Q. Will you refer, Captain, to Paragraph 3 of Government's Exhibit 13, that is the Krug-Lewis agreement, and if you will, please, read that paragraph.

A. Paragraph 3 of Government's Exhibit No. 13, the Krug-Lewis agreement of May 29, 1946, reads as follows:

"Workmen's Compensation and Occupational Disease.

365 "The Coal Mines Administrator undertakes to direct each Operating Manager to provide its employees with the protection and coverage of the benefits under Workmen's Compensation and Occupational Disease laws, whether compulsory or elective, existing in the States in which the respective employees are employed. Refusal of any Operating Manager to carry out this direction shall be deemed a violation of his duties as Operating Manager. In the event of such refusal the Coal Mines Administrator will take appropriate action which may include disciplining or replacing the Operating Manager or shutting down the mine."

Q. Captain, is it a fact that various of the States in which mines later seized under the Executive Order are located have Workmen's Compensation and Occupational Disease Laws which are only elective?

A. That is correct.

Q. Paragraph 3 which you have just read of the Krug-Lewis agreement was approved by the National Wage Stabilization Board in its order of May 31, 1946, was it not?

A. That is correct.

Q. Captain, I show you Government's Exhibit 29 and ask you to identify, if you will, that document.

The COURT. In the interest of orderly procedure the Court
366 would like to know whether the Government is introducing this testimony as testimony in chief or as redirect testimony.

Mr. SONNETT. As redirect, if the Court please, in response to the suggestion made by counsel for the defendants during cross-examination and in argument to the effect that the Government was not exercising sovereign function. The purpose of this is to demonstrate that the Government was and is.

The COURT. Proceed.

367 The WITNESS. Government's Exhibit No. 29 is, first a memorandum from the Coal Mines Administration, dated August 15, 1946, and signed by the Deputy Coal Mines Administrator to the Operating Managers for the United States, and in it points out the requirements of the Krug-Lewis Agreement with respect to workmen's compensation and occupational disease laws and further explains to the operating managers that the statutes of the various States in which these mines are located arrange themselves into three classes, three general classes with respect to workmen's compensation and occupational disease laws.

"And they are (a) Coverage under Workmen's Compensation and Occupational Disease Laws; both elective.

"(b) Coverage under Workmen's Compensation Laws compulsory, but elective under Occupational Disease Laws.

"(c) Coverage under Workmen's Compensation Laws elective; no Occupational Disease Laws in effect."

Also a part of Government Exhibit 29, and directly following that memorandum is Order No. CMAN-11, dated August 15, 1946, signed by the Deputy Coal Mines Administrator, and addressed to the operating managers in the States of Colorado—that is, whose mines are
located in the States of Colorado, Georgia, Indiana, Missouri,
368 Nebraska, New Mexico, North Carolina, Pennsylvania and
West Virginia, and it takes that classification and is an order by the Government to the operating managers directing them to comply with those laws.

Order No. CMAN-11 (a) is a similar directive or order from the Coal Mines Administrator signed by the Deputy Coal Mines Administrator, and dated August 15, 1946, to the operating managers for mines located in the States of Illinois, Kentucky, and Virginia, directing them to put into effect the State laws on workmen's compensation and occupational disease laws as found in those three States.

And, finally, Government's Exhibit 29 contains a copy of Order No. CMAN-11-B, dated August 15, signed by the Deputy Coal Mines Administrator and addressed to the operating managers whose mines are located in Alabama, Kansas, Tennessee, and Texas, directing them to put into force and effect the workmen's compensation and occupational disease laws found in those afore-mentioned States.

By Mr. SONNETT:

Q. Captain, will you refer again to the Krug-Lewis Agreement, paragraph 4, and read the first three or four sentences of that paragraph?

A. Paragraph 4 of the Krug-Lewis Agreement, Government's Exhibit No. 13, reads as follows:

"Health and welfare program.

369 "There is provided a health and welfare program in broad outline—and it is recognized that many important details remain to be filled in—such program to consist of three parts, as follows:"

Shall I continue?

Q. Will you read subparagraph (a), at least the first several sentences of it?

A. Subparagraph (a) under Section 4 of the Krug-Lewis Agreement, reads as follows:

"A welfare and retirement fund.

"A welfare and retirement fund is hereby created and there shall be paid into said fund by the operating managers five cents per ton on each ton of coal produced for use or for sale. This fund shall be managed by three trustees, one appointed by the Coal Mines Administrator, one appointed by the president of the United Mine Workers, and the third chosen by the other two."

Shall I continue?

Q. Read the next sentence, please, Captain.

A. (Continuing): "The fund shall be used for making payments to miners, and their dependents and survivors, with respect to (1) wage loss not otherwise compensated at all or adequately
370 under the provisions of Federal or State law, and resulting from sickness (temporary disability), permanent disability, death, or retirement, and (2) other related welfare purposes, as determined by the trustees."

Q. Captain, did any such welfare and retirement fund exist with respect to the seized mines prior to the Krug-Lewis Agreement?

A. Not to the best of my knowledge and belief, it did not.

Q. Was that provision of the Krug-Lewis Agreement approved by the Wage Stabilization Board in its order of May 31, 1946?

A. It was.

Q. I show you Government's Exhibits 30 and 31, Captain, and ask if you can identify those documents.

(The documents were handed to the witness.)

A. Government Exhibit No. 30 is a copy of Order No. CMAN-5, signed by the Coal Mines Administrator and dated 2 July 1946. It is directed to the operating managers for the United States, and directing that they comply with the memorandum of agreement dated June 27, 1946, between the Coal Mines Administrator and the United Mine Workers of America, under which agreement there was provision made for an interim operating program for the
371 collection and custodianship of monies collected for the welfare and retirement fund in accordance with Section 4 (a) of the Krug-Lewis Agreement.

Government's Exhibit No. 31 is a copy of Order No. CMAN-8, signed by the Deputy Coal Mines Administrator, under date of July 29, 1946. It is directed to the operating managers for the United States of America, and it prescribes the procedure in detail under which those operating managers shall make payment of the five cents per ton collected in accordance with Section 4 (a) of the Krug-Lewis Agreement.

372 Mr. SONNETT. I offer in evidence, if the Court please, Exhibits 29, 30, and 31.

Mr. HOPKINS. To which the defendants offer no objection.

The COURT. Very well.

(Thereupon, Government's Exhibits Nos. 29, 30, and 31 for identification were received in evidence.)

By Mr. SONNETT:

Q. Captain, will you refer to Paragraph 4 (b) of the Krug-Lewis Agreement and read that paragraph?

A. Paragraph 4 (b) of Government's Exhibit No. 13, the Krug-Lewis Agreement, reads as follows:

"A Medical and Hospital Fund.

"There shall be created a Medical and Hospital Fund, to be administered by trustees appointed by the president of the United Mine Workers. This fund shall be accumulated from the wage deductions presently being made and such as may hereafter be authorized by the Union and its members for medical, hospital, and related purposes. The trustees shall administer this fund to provide or to arrange for the availability of medical, hospital, and related services, for the min-

ers and their dependents. The money in this fund shall be used
373 for the indicated purposes at the discretion of the trustees of the fund; and the trustees shall provide for such regional or local variations and adjustments in wage deductions, benefits and other practices, and transfer of funds to local unions as may be necessary and as are in accordance with the agreements made within the framework of the Union's organization."

"The Coal Mines Administrator agrees (after the trustees make arrangements satisfactory to the Coal Mines Administrator) to direct each operating manager to turn over to this fund, or to such local unions as the trustees of the fund may direct, all such wage deductions, beginning with a stated date to be agreed upon by the Administrator and the President of the United Mine Workers; provided, however, that the United Mine Workers shall first obtain the consent of the affected employees to such turn-over. The Coal Mines Administrator will cooperate fully with the United Mine Workers to the end that there may be terminated as rapidly as may be practicable any existing agreements that earmark the expenditure of such wage deductions, except as the continuation of such agreements may be approved by the trustees of the fund.

374 "Present practices with respect to wage deductions and their use for provision of medical, hospital, and related services shall continue until such date or dates as may be agreed upon by the Coal Mines Administrator and the President of the United Mine Workers."

Q. Captain, I show you Defendants' Exhibit 1, a letter from you to Mr. John L. Lewis, president of the United Mine Workers, of October 21, 1946, and ask, please, if you will read the first full paragraph of page two of the exhibit.

A. The first full paragraph on page two of Defendants' Exhibit No. 1 reads as follows:

"Although the underlying contract structure consisting of the district agreements provides machinery for the disposition of any disputes arising under the contract, and this machinery is believed available for disposition of any differences over the meaning of the provisions of the Welfare and Retirement Fund clauses in view of the fact that the differences between the Coal Mines Administration and the United Mine Workers are in general common to all mines in Government possession and control, this Administration is agreeable to the appointment of a mutually satisfactory umpire—preferably an outstanding jurist—to whom this dispute may be submitted for a determination to be applicable to all mines subject to the Agreement."

375 Q. In other words, Captain, you suggested that with respect to the controversy over the 4 (a) fund—that is, the Welfare and Retirement Fund—that the dispute referred to in that exhibit, Defendants' Exhibit 1, be submitted to a mutually satisfactory umpire to be appointed by the Government and by the defendants, preferably an outstanding jurist, in order to try to reach some agreement or resolution of that dispute. Is that correct?

Mr. HOPKINS. Before you answer, we object to the question, because——

The COURT. Objection sustained.

By Mr. SONNETT:

Q. Captain, did you ever get a response from the defendants, or either of them, to the suggestion which you made in that letter, Defendants' Exhibit 1?

A. No; I did not.

Q. I believe your prior testimony was to the effect that the sum now being held in the Welfare and Retirement Fund aggregates some $10,100,000. Is that correct?

A. That is correct.

Q. And up to the present time you have had no suggestions from the defendants concerning their desire or lack of desire to appoint an umpire as suggested in that letter?

Mr. HOPKINS. To which we object, Your Honor, for the same
376 reasons that the document speaks for itself, to wit, the letter, and if I understand his question correctly, now he is going into repetition of his previous question which he is asking this defendant for a conclusion. Perhaps I misunderstood him.

The COURT. Maybe I have overlooked something, but as I understand it, of course the document speaks for itself, but what he is asking now is whether or not the suggestion contained in the document was ever recognized in any way by the defendants.

Is that what you are asking?

Mr. SONNETT. That is exactly it, sir.

Mr. HOPKINS. I withdraw my objection. I did not understand it.

The COURT. Yes, sir.

The WITNESS. May I have the question read, please?

The REPORTER (reading):

"Q. I believe your prior testimony was to the effect that the sum now being held in the Welfare and Retirement Fund aggregates some $10,100,000; is that correct?

"A. That is correct.

"Q. And up to the present time you have had no suggestions from the defendants concerning their desire or lack of desire to appoint an umpire as suggested in that letter?"

A. That is correct.

377 Q. Now, with respect to the provision, Captain, of the Krug-Lewis Agreement providing, in substance, that the welfare and retirement fund—and I quote: "shall be managed by three trustees, one appointed by the Coal Mines Administrator, one appointed by the president of the United Mines Workers, and the third chosen by the other two," did the Government suggest the name of any person to the defendants who might be the Government's trustee under that provision?

A. Yes.

Q. What was the name of that person?

A. The name of the person suggested as the trustee by the Secretary of the Interior was Rear Admiral James Boyle, U. S. N., retired.

Q. Have the defendants ever appointed their trustee under that agreement?

A. Not to the best of my knowledge and belief.

Q. Captain, I refer you to 4–B of the Krug-Lewis Agreement, which deals with the Medical and Hospital Fund, and then to Section 10 of the Krug-Lewis Agreement, and ask if you will read Section 10, please.

A. Section 10 of the Krug-Lewis Agreement, Government Exhibit No. 13, reads as follows:

"Fines and Penalties.

378 "No fines or penalties shall be imposed unless authorized by the Coal Mines Administrator. In the event that such fines or penalties are imposed by the Coal Mines Administrator, the funds withheld for that reason shall be turned over to the trustees of the fund provided for in Section 4–B hereof, to be used for the purpose stated therein."

Q. Will you refer back to 4–B and read the second sentence and the third sentence of 4–B?

A. The second and third sentences of paragraph 4–B of the Krug-Lewis Agreement, Government Exhibit 13, read as follows:

"This fund shall be accumulated from the wage deductions presently being made and such as may hereafter be authorized by the Union and its members for medical, hospital, and related purposes. The trustees shall administer this fund to provide, or to arrange for the availability of medical, hospital, and related services for the miners and their dependents."

Q. Now, will you read the first sentence of 4–B, Captain?

A. The first sentence of 4–B reads:

"There shall be created a medical and hospital fund, to be administered by trustees appointed by the President of the United Mine Workers."

Q. Captain, to your knowledge, has the president of the United Mine Workers ever appointed trustees under Section

379 4–B of the Krug-Lewis Agreement?

A. Not to my knowledge.

Q. Now, Captain, have any fines or penalties ever been imposed and authorized under Section 10 of the Krug-Lewis Agreement?

A. They have been authorized by the Coal Mines Administration.

Q. Now, it is also true that from time to time requests for the imposition of fines have been made and that they have not been authorized by the Coal Mines Administration?

A. That is correct.

Q. Upon what basis, substantially, has the Coal Mines Administrator either approved or disapproved a request for the imposition of fines?

A. Upon the basis of the district agreements or contracts brought forward by the Krug-Lewis Agreement and an investigation of the events leading up to the alleged violation, purely upon the facts developed and the requirements of the contract, we approve or disapprove and hence authorize or refuse to authorize the fine.

Q. As a matter of general principle, which I think you testified to on cross-examination, when you find that, in your opinion, an Operating Manager had in any way instigated the walk-out, have you refused to authorize the imposition of the fine?

380 A. Yes; many of them.

Q. On the other hand, where you have not found that the Operating Manager has in any way instigated the walk-out, but that there was clearly, in your opinion, an improper walk-out, you have authorized the imposition of the fines?

A. That is correct.

Q. Now, I refer you, Captain, to Government Exhibit 18, a memorandum of the agreement of August 28, 1946, signed by the Coal Mines Administrator and by John O'Leary, Acting President of the United Mine Workers, and ask you if you will read that document in full.

A. Government Exhibit No. 18 is a copy of an Agreement dated August 28, 1946, reading as follows:

"The undersigned hereby agree as follows:

"1. Pending the making of proper arrangements for trustee operation of the Medical and Hospital Fund provided for in Section 4–B of the Krug-Lewis Agreement of May 29, 1946, the International Secretary-Treasurer of the United Mine Workers of America is hereby designated to act as custodian of the money accruing to such fund by virtue of the provisions of Section 10 of said Krug-Lewis Agreement.

"2. If any fines or penalties under such Section 10 of said Agreement are authorized by the Coal Mines Administrator the funds withheld for that reason shall be turned over to the said International Secretary-Treasurer of the United Mine Workers of America as said custodian in trust for the benefit of said Medical and Hospital Fund when put into operation;

381

"3. The function of said custodian shall be limited to the receipt and safe keeping of said money derived from the terms of said Section 10 of the Krug-Lewis Agreement and to account therefor to the trustees of said Medical and Hospital Fund as provided in Section 4–B of said Agreement;

"4. This Agreement prescribed an operating program in accordance with the basic provisions of Section 4–B and Section 10 of said Agreement of May 29, 1946, and is not a modification of the terms and conditions set forth in that Agreement."

That is signed by Ben Moreell, Coal Mines Administrator, and John O'Leary, Acting President, United Mine Workers of America.

382 Q. Captain, I don't think I quite got the last paragraph. Will you re-read Paragraph 4, please?

Mr. HOPKINS. It is repetition, Your Honor.

Mr. SONNETT. Now, if Your Honor please, counsel has been cross-examining this witness at some length to demonstrate——

The COURT. The Court overrules the objection.

A. Paragraph 4 of Government's Exhibit 18 reads as follows:

"4. This agreement prescribes an operating program in accordance with the basic provisions of Section 4 (b) and Section 10 of said agreement of May 29, 1946, and is not a modification of the terms and conditions set forth in that agreement."

Signed Ben Moreell, Coal Mines Administrator; John O'Leary, Acting President, United Mine Workers of America.

Q. Captain, is it the fact that neither the Government of the United States nor any of the operators of the coal mines would receive any portion of the fines and penalties imposed under Section 10 of the Krug-Lewis agreement?

Mr. HOPKINS. We object to that, Your Honor. It is a conclusion of the witness. The contract speaks for itself, and if he wants to emphasize it——

383 The COURT. I think that is a matter of construction.

Mr. HOPKINS. Yes, sir.

The COURT. I will sustain the objection.

By Mr. SONNETT:

Q. Is it a fact that any and all penalties which may be imposed and have been imposed are paid over and have been paid over to the International Secretary-Treasurer of the United Mine Workers of America, as custodian of such funds?

A. I could not testify as to whether they have been paid over. Our function is to direct the Operating Manager to withhold those moneys from the wages of the persons involved, and further directing him to turn such money over to the Secretary-Treasurer of the United Mine Workers of America, but I do not have any way to know at the moment whether he has or has not in each case.

Q. But you have issued such direction?

A. That is correct.

Q. I don't think I asked you, what is the total amount of fines and penalties thus far imposed, to the best of your knowledge?

A. The total amount of fines and penalties authorized by the Coal Mines Administration, as of November 22, 1946, approximated $158,000.

Q. Captain, will you refer again to the Krug-Lewis agree-
384 ment, paragraph 6 of that agreement, and read the paragraph?

A. Paragraph 6 of the Krug-Lewis agreement, Government's Exhibit 13, reads as follows:

"Wages.

"(a) All mine workers, whether employed by the day, tonnage, or footage rate, shall receive $1.85 per day in addition to that provided for in the contract which expired March 31, 1946.

"(b) Work performed on the sixth consecutive day is optional, but when performed shall be paid for at time and one-half or rate and one-half.

"(c) Holidays, when worked, shall be paid for at time and one-half or rate and one-half. Holidays shall be computed in arriving at the sixth and seventh day in the week."

Q. Captain, that represented a change, did it not, in the terms and conditions of employment respecting wages which had been in effect at the seized mines prior to Government seizure?

A. That is correct.

Q. Can you state approximately what percentage of increase in wages to the mine workers was provided for by that Paragraph 6 of the Krug-Lewis agreement?

Mr. HOPKINS. We submit again it is a conclusion of the
385 witness. The contract speaks for itself. If counsel for the Government here is undertaking to——

The COURT. The Court sustains that objection.

Mr. SONNETT. The Government offers the following proof, Your Honor:

That a substantial change by way of an increase in the wages of the miners was provided for by this agreement, and furthermore, that by direction of the Government that change was made effective with respect to employment at the mines.

The COURT. Of course, it is not exactly clear to the Court under what circumstances the change was made. If the Government offers to prove the change was made on the basis of Section 5 of this Smith-Connally Act——

Mr. SONNETT. I haven't as yet come to that, Your Honor, but I am laying a foundation for that very line of questioning.

The COURT. If that is the purpose of it the Court thinks it is proper because it is some evidence tending to show that it was the understanding at the time the Krug-Lewis agreement was made that differences should be adjusted by Section 5 of the Smith-Connally Act. If that is the purpose of it, it is admissible.

Mr. SONNETT. May we proceed then with an answer to the question, if the Court please?

386 Mr. HOPKINS. If the Court please, now the matter of this testimony, as I understand it, under the answer that counsel has given to the Court, is already in this record. It is in this record that the Krug-Lewis agreement was executed on May 29. It is in this record that the Wage Stabilization Board approved that contract in all of its parts on May 31. What more is there to be gained, than from the standpoint of repetition, we submit, Your Honor, for this record if the contract is in there and it is approved and it is in the record to that effect? We submit it is plain repetition.

The COURT. The Court may not understand entirely the defense; but as the Court understands it, the defense, or part of the defense, is that Article 15, or Section 15, I forget which, of the Bituminous Coal Agreement, was the effective measure whereby differences were to be adjusted and the Government claims that that section or paragraph, whichever it is, was not carried forward into the Krug-Lewis agreement, but that the differences were to be adjusted in accordance with Section 5 of the Smith-Connally Act.

If I am correct in that, then the Court thinks that any evidence tending to show that both parties to the agreement recognized the validity of Section 5 of the Smith-Connally Act is material to the issue.

Mr. HOPKINS. We sumbit, Your Honor, that the question of
387 the interpretation of Section 15, to which the Court has adverted, and all the proof that Government is offering here in reference to the Krug-Lewis agreement on that point, and in reference to Section 5 of the War Labor Disputes Act is an issue, if at all, in the complaint in chief as filed here by Government for declaratory judgment. It cannot be made and is not an issue before Your Honor now on the question of contempt.

The COURT. Let us see: Defendants have claimed and are claiming now there is no contempt, and I presume that one thing they are trying to prove is that they acted in good faith, so that even if they should be found in contempt the punishment for the contempt would be very different than the punishment for deliberate violation of their agreement. I just suppose all that is in the picture, sir, and if it is it is admissible.

Mr. HOPKINS. May I add this for observation of the Court and Government counsel? This witness was not a participant in the execution of the Krug-Lewis agreement, which I think you will admit, Your Honor.

Mr. SONNETT. Is counsel testifying now, if the Couet please?

Mr. HOPKINS. I want to make that statement in order that it may be a predicate for the objection.

If the interpretation of the parties in reference to Section 15
388 or any other matter of the Krug-Lewis agreement is to be had it should come from the actual negotiators of that contract,

Your Honor. Not that I doubt at all the integrity of this witness, but I think he himself was not a party to the original negotiation. Therefore, we feel that an objection to his testimony now that would seek to interpret the Krug-Lewis agreement in reference to those points is well taken.

The COURT. He is not asking for an interpretation. He is asking for facts, aren't you?

Mr. SONNETT. Exactly so.

The COURT. Government counsel is now asking for facts. If the witness doesn't know the facts he shouldn't testify to them.

Mr. HOPKINS. I am sure he wouldn't undertake to.

The COURT. And if he claims he does he is subject to cross-examination.

Mr. HOPKINS. Very well. We just want to repeat for the record, Your Honor, that in our opinion the objection is well taken because it is not pertinent nor germane to the issue before Your Honor at this time.

The COURT. The objection is overruled, and the Court will take a five-minute recess.

(Short recess.)

389 By Mr. SONNETT:

Q. Captain, referring to paragraph 6 of the Krug-Lewis Agreement, will you state approximately what percentage of increase in the wages of the mine workers was provided by that paragraph?

A. On the basis of a basic rate of one dollar, this provided for approximately an 18½ percent increase.

Q. Now, that increase in that provision was submitted to the Wage Stabilization Board and approved by it in its order of May 31, 1946, was it not?

A. That is correct.

Q. Captain, I show you Government Exhibit 15 and ask you if it is not the order of the Coal Mines Administration, putting into effect the wage provisions and other provisions of the Krug-Lewis Agreement after the approval of that Agreement by the Wage Stabilization Board.

A. It is.

Q. Captain, I refer you now to Section 11 of the Krug-Lewis Agreement and ask if you will read that.

A. Section 11 of Government Exhibit No. 13, the Krug-Lewis Agreement, reads as follows:

"Supervisors.

"With respect to questions affecting the employment and bargaining status of foremen, supervisors, technical and clerical
390 workers employed in the bituminous mining industry, the Coal Mines Administrator will be guided by the decisions and procedure laid down by the National Labor Relations Board."

Q. That provision was submitted to the Wage Stabilization Board, was it not?

A. That is correct.

Q. Did that provision represent a substantial change over the practice which had existed prior thereto in the mines?

A. It did.

Mr. SONNETT. Would you mark these as three exhibits and let me have them back? I want to refer to them.

(Three documents were marked as "Government Exhibits 36, 37, and 38 for identification.")

Mr. SONNETT. If the Court please, I have here Government Exhibit 36, Government Exhibit 37, and Government Exhibit 38 for identification.

The first consists of a certified copy of the brief and appendix of the Government in the United States Court of Appeals for the District of Columbia in case No. 9342, entitled "Jones and Laughlin Steel Corporation, Appellant, against United Mine Workers of America, et al.," the brief being submitted by the Department of Justice.

Government Exhibit 37 is the appendix to appellant's petition and brief in the same matter, the record containing the proceedings in this court in that matter, including, if the Court please, an
391 answer submitted in that case by these defendants.

I have further Government Exhibit 38, a statement signed by counsel in this matter for these defendants, and submitted to the Circuit Court of Appeals, in which counsel adopt as their brief on appeal in the Circuit Court in that case the brief submitted by the Government, with specific reference to the answer submitted by these defendants in that case.

I should like to read and subsequently make an offer of these documents.

The answer of the defendant United Mine Workers of America, an unincorporated association——

The COURT. When was the date that brief was filed?

Mr. SONNETT. The brief, if the Court please, was filed——

The COURT. The defendants' brief, I mean.

Mr. SONNETT. The defendants' statement, if the Court please, adopting the brief of the Government in the Circuit Court, was filed on September 24, 1946, according to the certification of the Clerk.

The answer of the defendants in this court, filed June 25, 1946, appears at page 131–A and following pages of Government Exhibit 37 for identification. In that answer the defendants allege in part:

"1. This court is without jurisdiction to grant said preliminary injunction as prayed."

392 That was an injunction, as appears from the record, prayed for by Jones and Laughlin Steel Corporation to prevent the execution of that paragraph of the Krug-Lewis Agreement which deals with the unionization of supervisory employees, all of which appears more fully in these documents.

The answer of these defendants in that case also alleges that the complaint by the Jones and Laughlin Steel Corporation was in legal effect and substance a suit against the United States, to the filing of which there exists no Congressional authorization, consent, or permission, and any preliminary injunction, therefore, as moved by this plaintiff, would be one directed against the United States acting through its duly-authorized officers and agents.

The answer of the defendants in that case in this court, also, in paragraph 6, stated:

"This Court will not enjoin the defendants Krug and Moreell even temporarily, because neither has done or threatened to do any act to

invade any right of this plaintiff. Being in lawful possession of the mines and operating them under the lawful order of the President, their policies, management, operation, and control of the mines during the time in which these defendants are in lawful possession thereof will not be restrained or enjoined by this Court in the absence of a clear showing of fraud, oppression, or illegal conduct upon their part or that of either of them or the injury or destruction of the rights of this plaintiff."

393 In Government's Exhibit 36, which was the brief of the Government on appeal in that case, the Government asserted in part——

The COURT. Was that brief adopted?

Mr. SONNETT. It was, as shown by Government's Exhibit 38, for identification, if the Court please.

The COURT. Sir?

Mr. SONNETT. It was as shown by Government's Exhibit 38 for identification.

In the Government's brief—perhaps, if the Court please, I should first read the adoption of the Government's brief in the Circuit Court by these defendants.

That is, Government's Exhibit 38 for identification, reads as follows:

"In the United States Court of Appeals for the District of Columbia.

"Jones and Laughlin Steel Corporation, Appellant, versus United Mine Workers of America, et al., Appellees, No. 9342.

"Memorandum as to brief of United Mine Workers of America, an unincorporated association, and John L. Lewis, as a representative member thereof.

"It appearing that J. A. Krug, Secretary of the Interior, as Coal Mines Administrator, and his deputy, appellees herein, have

394 already filed in this cause their brief on appeal, and it further appearing therefrom that the points made in said brief and authorities cited therein are in substance and to all intents and purposes the points and authorities upon which these two appellees will rely upon the argument of this appeal, and it further appearing that an additional brief now filed on behalf of the United Mine Workers of America and John L. Lewis, appellees, as hereinbefore stated would be but a repetitious and duplicating burden upon the files of this court, with no substantially new matters being set up in said brief, with the permission of the other appellees already obtained, the United Mine Workers of America, an unincorporated association, and John L. Lewis as a representative member thereof, announce that they will rely upon the said brief already filed as aforesaid as and for and in lieu of any additional brief otherwise to be filed by them."

Signed: "William E. Leahy."

Signed: "Welly K. Hopkins."

Signed: "Harrison Coombs."

395 Signed: "Samuel Krunsky, Attorneys for appellees."

Now, the Government's brief which was thus adopted, if the Court please, in the Circuit Court of Appeals——

The COURT. The Government, I assume, appears on the theory that it was the real defendant under the Krug-Lewis Agreement. Is that correct?

Mr. SONNETT. Yes, Your Honor; and, further, that it was acting in a sovereign capacity and the suit was against the United States.

The COURT. It was against the United States?

MR. SONNETT. That was the Government's contention.

The COURT. I see.

Mr. SONNETT. A contention adopted expressly by these defendants in that case.

The COURT. The position of the Government was, it was adopted by the national defendants?

Mr. SONNETT. Correct, sir.

The Government's brief in that case, at page five, if the Court please, states in part, and I quote:

"On May 29, 1946, after negotiations with the appellee union, an agreement (the 'Krug-Lewis Agreement') was entered into between the Secretary of the Interior and the appellee union establishing subject to the approval of the National Wage Stabilization
396 Board and the President of the United States, the terms and conditions of employment at the mines for the period of the Government's possession."

At page 14 of the Government's brief in that case, it was stated:

"To read the War Labor Disputes Act and the Executive Order—as appellant apparently suggests we must—so as to withhold from the Government agency made responsible for the operation of Government-possessed plants, the power to eradicate the roots of the labor disturbance which compelled Government seizure, would be to frustrate the Congressional purpose and to impute to the Congress and to the President an incredible myopia as to the realities of wartime labor relations. Experiences prior to the enactment of the War Labor Disputes Act had made it quite clear that Government seizure in itself could hardly accomplish a resumption of production in industrial plants torn by labor strife."

Again, the Government's brief in that case, at pages 22 to 25, read as follows:

"The regulations for the operation of coal mines under Government control do not preclude the execution and effectuation of the agreement with U. C. T."

The brief states:

397 "The regulations were formulated in an effort to assure the minimum of Government intervention in the operation of the coal properties consistent with the primary purpose of Government possession, that is, the maintenance of full, uninterrupted coal production. This purpose was in accord with the Presidential dictate in his Executive Order, that the Secretary of the Interior 'shall permit the managers of the mines taken to continue with their managerial functions to the maximum degree possible consistent with the aims of this order.'

"The regulations contemplate that the mining companies, appreciating the necessity for Government intervention, will cooperate with the Secretary of the Interior in the operations of the mines. It is made clear, however"—and this portion is underscored—, "that acceptance of the cooperative arrangement by the owners does not in any sense free them from compliance with directions issued by the Secretary and Coal Mines Administrator, and provisions made for terminating the arrangement should any operator refuse to comply with such directions.

"Thus, although it is provided that 'all properties in the possession of the Government shall be operated in a manner consistent
398 with the fact that title to the properties remains in the owners thereof and that the Government having temporarily taken possession or custody will assert only such rights as are necessary to accomplish the national purpose of continued and maximum production' and that 'wherever the cooperation of the company and its personnel can be secured, the existing organization of the mining company will be utilized and the company will continue operation in the regular course of business as a going enterprise', it is clearly stipulated that"—and this is underscored—"the companies must conform 'with such directions as the Government may issue.'

"Furthermore, all officers and employees of the company are directed to 'serve in full recognition of (their responsibilities to the Government) and subject to all orders and regulations of the Coal Mines Administrator, and where cooperation of the company cannot be secured, provision is made for supplanting private management with Government management.'"

The brief, if the Court please, continues to discuss the regulations concerning which counsel for the defendants have cross-examined in this case and which the Government this morning has put into evidence in this case, and to point out——

Mr. PADWAY (interposing). Now just a minute, Mr.
399 Sonnett.

May it please the Court, this all may be very interesting, but it appears to me that the proper time for this would be in argument.

Now, the brief has been offered, I understand, or will be offered if it has not——

Mr. SONNETT (interposing). As soon as I make clear to the Court what is in the brief, I will then offer it.

Mr. PADWAY. That is just what I am objecting to.

The COURT. Mr. Padway says that this last remark of yours, sir, is an interpretation of the brief. Isn't that what you say?

Mr. PADWAY. Yes. Now, Your Honor——

The COURT. Just a minute. And, if it is an interpretation of the brief, it is not admissible in evidence.

Isn't that what you say?

Mr. PADWAY. Yes.

The COURT. Well, of course, you are right. I sustain the objection.

Mr. PADWAY. Counsel may, at the conclusion of testimony, argue it if he——

The COURT. The Court has sustained your objection, Mr. Padway.

Mr. PADWAY. Then I will remember the admonition you
400 gave to Mr. Sonnett the other day and I will take it now.

Mr. SONNETT. If the Court please, I did not intend to offer this as an interpretation. I was unconsciously reading from the brief.

The brief, on page 25, says——

Mr. PADWAY (interposing). Now just a moment.

Counsel is going to do the same thing I am objecting to.

The COURT. He is reading from the brief now, Mr. Padway.

Mr. PADWAY. Even so, even so; the brief, I understand, will be offered, or portions of it.

Now, to read this brief at this time and show respective contentions of parties to another lawsuit is wholly inadmissible.

Aside from that, if counsel were to take the time, I presume he would read the entire brief.

In what way is that going to enlighten us except with respect to argument? Then our brief would be read.

We are contending there one particular position, and the Government is contending another. That is another lawsuit. Its applicability to this lawsuit can have nothing else but an argumentative effect.

Now, I don't think that should be done. Besides, it takes time.
401 Aside from that, there is a large record here. This record must be written up, it must be paid for.

Now, when the time arrives, and that is when the evidence is all in, if counsel wishes to enlighten this Court respecting admissions or positions taken in another suit which may have a bearing on this suit, that is the time to do it.

But this is in the nature of testimony on the part of counsel, on the part of Mr. Sonnett, where, in another lawsuit, we said thus and so. To me that is not evidence, but argument.

The COURT. After you finish your reading, are you having a question to the witness on what you are reading?

Mr. SONNETT. Only to this extent, if the Court please. Counsel cross-examined at some length on the theory which he announced to this Court that the operation of these mines by the Government——

The COURT. That is true, sir, but would the reading of the brief—and it was not objected to until just a moment ago—would the reading of that brief throw light on this witness' testimony as redirect testimony, or should this be introduced as independent testimony?

Mr. SONNETT. I think, if the Court please, an offer either way would be appropriate, but I——
402 The COURT. You see what I mean. Just to read it in the presence of the witness does not make it his testimony, sir.

Mr. SONNETT. What I had in mind, if the Court please, was that perhaps counsel might want some further opportunity on recross of this witness, and I did not want to deprive him of that opportunity.

Mr. PADWAY. We understand the Government, if the Court please, does not deprive us of that. We are not accusing the Government with any lack of liberality with respect to any information, or with a lack of opportunity to meet their contentions. We know what they are.

The COURT. Mr. Padway, the Court waited for an objection, and a large part of this brief was read before there was any objection.

Mr. PADWAY. That is true.

The COURT. But of course the Court agrees with you that if the brief is admissible at all, that it is admissible in itself and not as redirect examination of this witness.

If that is your objection.

Mr. PADWAY. That is my objection.

The COURT. Then the Court sustains it.

Mr. SONNETT. If the Court please, my reading of the brief——

The COURT. The Court does not think it should strike out
403 testimony already introduced before the objection was made.

Mr. HOPKINS. If the Court please, in that regard, one reason that counsel for the defendants had not heretofore interposed an

objection upon the point stated by Judge Padway, was the fact that Government counsel was merely identifying documents he has not yet offered.

The COURT. Gentlemen, the Court will resolve that right away.

If there is any misunderstanding, then the Court thinks that the testimony heretofore introduced by the plaintiff as to the contents of those briefs should be stricken; the brief should be offered if the Government desires to offer it, at a later time and not in connection with the examination of this witness.

The Court will pass upon their admissibility at that time.

Mr. SONNETT. If the Court please, the Government in that event is through with this witness and will make an offer of this proof at the conclusion of the witness' testimony.

The COURT. Very well.

Is there any further examination of this witness, gentlemen?

Mr. HOPKINS. May it please Your Honor, there are a few questions that come from the redirect examination of this witness.

404 RECROSS-EXAMINATION

By Mr. HOPKINS:

Q. I believe, Captain Collisson, on redirect examination you identified Government's Exhibits 27 and 28 as an interim order of the Coal Mines Administrator, under Exhibit 27, in reference to the Safety Code, and Exhibit 28 was the Code itself.

May I not ask you, sir, inasmuch as that was based upon Section 1 of the Krug-Lewis agreement, is it not a fact, sir, that the matter of the Mine Safety Code was one of long dispute as between the Coal Mines Administration and the Mine Workers in the actual preparation thereof? That is correct, isn't it?

A. May I have that question again, Mr. Hopkins? I am not sure I understand the question.

Q. Is it not a fact that the preparation of that Mine Safety Code was a matter of long dispute as between the Coal Mines Administration and the Mine Workers in its preparation?

A. Yes; I think that Code took at least a month and a half to prepare, and during that time there was dispute over points to be contained in it.

Q. It is a fact, is it not, that Section 2 of the Krug-Lewis agreement provides that:

"As soon as practicable and not later than thirty days from
405 the date of the making of the agreement, the Director of the Bureau of Mines after consultation with representatives of the United Mine Workers and such other persons as he deems appropriate, will issue a reasonable code of standards and rules pertaining to safety conditions and practices in the mines."

That is correct, is it not?

A. That is correct.

Q. And as a matter of fact that code was not promulgated until sometime in July, isn't that right, about July 29?

A. I don't remember the date, but sometime in July is correct.

Q. July 24?

A. Yes.

Q. Is it not a fact that before the promulgation of that code as presented through Government's Exhibit this morning, that there was a previous code agreed to that was not actually approved by the Director of the Bureau of Mines, and was printed on the 27th of June?

A. There was a previous code submitted by the Director of the Bureau of Mines.

Q. And that previous code had been printed and had gone out to the field in many instances, had it not?

A. I am not clear. There was no disseminating of the code
406 from our office, that is the Coal Mines Administrator. If any other Administrator had sent it out, I am not familiar, but we have not.

Q. And after it had been approved and printed what was the reason it wasn't put into effect?

A. The reason the code was not put into effect was that it had, in the opinion of the Coal Mines Administration, impractical provisions.

Q. Although those provisions had been approved by the Director of the Bureau of Mines?

A. That is correct.

Q. Is it not a fact that the Mine Workers objected, and objected strenuously, to the recalling of that first Safety Code?

A. It is my understanding they did.

Q. And is it not true there was a continuous dispute between the Mine Workers and the Coal Mines Administration in reference to points that should be included in the second code that undertook to take the place of the first code?

A. During the preparation of the second code?

Q. Yes, sir.

A. I don't recall. I don't recall any submissions. As I recall it the Mine Workers withdrew from those conferences and were not present.

Q. Upon the ground, was it not, to refresh your recollection,
407 that the second code was taking out of the first code matters of safety that had been approved by the Director of the Bureau of Mines?

A. I believe that is correct.

Q. As a matter of fact, isn't it also true that one of the reasons the Mine Workers were undertaking in that dispute upon that safety code to have it go into effect was the experience known as Straight Creek, Kentucky, where 24 men lost their lives on Christmas Eve night, 1945? Wasn't that one of the reasons that was assigned?

A. I don't recall that reason being brought up, but I should certainly think it was one, yes.

Q. And Straight Creek Mine was under Government seizure, was it not?

A. It was included in the list of Government mines seized——

Q. (Interposing). During the Government possession——

The COURT. Don't interrupt the witness.

The WITNESS. —although the disaster had occurred in December of 1945, if my memory is correct.

By Mr. HOPKINS:

Q. Christmas Eve night.

A. —and therefore the seizure notice not going out until May 21, 1946, the mine was inoperative.

Q. During the Government's possession of properties, such as
408 they were, and prior to being released by the Government, you did take jurisdiction over the matter of obtaining the bodies of 21 men out of that mine, as a result of lack of enforcing proper safety, didn't you?

A. We took no jurisdiction over getting the men out——

Q. (Interposing). You made inquiry officially of the Coal Mines Administrator——

The COURT. Mr. Hopkins, the rule in this Court in this——

Mr. HOPKINS. Pardon?

The COURT. The rule in this Court is this, that a witness cannot be interrupted in the middle of his answer, or at any other point of his answer. If his answer, in the opinion of counsel, or any part of it, is not appropriate or responsive, after his answer is given the counsel can move that it be stricken out, but don't interrupt the witness, please, in the middle of his answer.

Mr. HOPKINS. I beg pardon, sir; I have no desire to transgress the rule, and it was only in the interest of the question. I will undertake to abide strictly by Your Honor's admonition.

By Mr. HOPKINS:

Q. During that period of time the Government had possession of the Straight Creek Mine, you made official investigation, did you not, in reference to the removal of the 21 men in that mine who were killed in the original accident?

409 A. That is correct.

Q. Did you ever remove those men's bodies from that mine?

A. No; we did not.

Q. They still lie there in that mountain?

A. To the best of my knowledge and information they are still there.

410 Q. You were asked in reference to Government Exhibit 29, dealing with workmen's compensation and its applicability—that is, the applicability of that section to the Krug-Lewis Agreement dealing with workmen's compensation. I desire to ask you whether or not it is not a fact that many companies under Government possession have failed to give the coverage required under Section 3 of the Krug-Lewis Agreement and under your Coal Mines Administration directives?

A. I will have to answer that by saying that there could be. There are many companies that have complied, and that we know have complied. There are an appreciable number of companies that we have no way of determining as of this moment whether they have or whether they have not. Your latter number becomes smaller all of the time as we investigate.

Q. It is a fact, is it not, Captain, that the matter of proper and adequate coverage for workmen's compensation and occupational diseases under Section 3 of the Krug-Lewis Agreement has been one of constant dispute between the mine workers and the Coal Mines Administration?

A. No; I am not clear on that point at all. As a matter of fact, if there has been a dispute, it is news to me.

Q. Isn't it a fact that it has been a topic of discussion and request for enforcement on the part of the mine workers in almost every

411 conference they have had with you, both as Deputy and as Administrator?

A. No, not in every conference. If you are referring to the November 1 conference, yes, it was a subject for discussion in there, but I myself do not recall any previous conference on that subject.

Q. One of your deputies, I believe, Commander Doyle, on that particular occasion, on or about November 1, admitted that there were a number of companies that had not been checked up as to whether or not they even carried it?

A. That is correct.

Q. Have you as Coal Mines Administrator made any removals of Government-operating managers for failure to enforce or give the coverage under the workmen's compensation and occupational disease section?

A. Not to date.

Q. Captain, you were asked, in reference to Government Exhibit 31, which, as I recall, was the directive in reference to the payment of the amount of 5 cents per ton into the Health and Welfare Fund. Your directive—if I may have Exhibit 2, Mr. Clerk, please—dated July 29, 1946, provided, among other things, that the weights upon which the 5 cents per ton was to be paid would be railroad weights, did it not?

A. In brief, that is correct.

Q. That was issued over the objection of the mine workers, first registered with the Coal Mines Administration, was it not?

412 The COURT. May I ask you. Has that or has it not been gone over?

Mr. HOPKINS. No, sir; I do not think so, in that the Government has just offered this document.

The COURT. All right, sir. Proceed.

Mr. HOPKINS. I wanted to ask him in reference——

The COURT. I was under the impression that in previous cross-examination——

Mr. HOPKINS. Some reference may have been made to it.

The COURT. All right.

By Mr. HOPKINS:

Q. Is it not a fact that that basis for the weighing of the coal for the 5 cents per ton to the Welfare Fund was issued over the objection of the mine workers to the Coal Mines Administration?

A. That is correct.

Q. It was a matter of major dispute, was it not, sir?

A. It was, in my opinion.

Q. It was a matter of major dispute at all times subsequent to the issuance of this directive of July 29, was it not?

A. It was a very frequent topic of discussion and dispute.

Q. And it was an outstanding, unresolved dispute, was it not, on October 21, 1946?

Q. Did you or did the Coal Mines Administration enforce that directive, which provided, among other things, a place where the funds were to be paid? Did you enforce it as against all coal companies?

A. We directed that they make the payment—in cases, you mean, where the payment had not been made or where it was brought to our attention?

Q. Yes.

A. No; we reaffirm the directive, ordering the payment of such, and attempted to investigate why such payment had not been made.

Q. I direct your attention to what is known as the Carter Coal Company, which operates in West Virginia. Have they complied with your directive of July 29, 1946, as to the manner and place of payment of those funds so provided?

A. Not to the best of my knowledge—they have not.

Q. They have refused, have they not, to comply with your order?

A. They have refused, offering substitute plans for the direction of payment.

Q. And you have not enforced, sir, have you, as against the Carter Coal Company, the requirements of that order?

A. No, we have not.

Q. You have not removed your Government Operating
414 Manager for failure to comply, have you, sir?

A. No, we have not.

Q. He remains the same manager both before and after noncompliance by that Company?

A. He does.

Q. Adverting to your letter of October 21, 1946, addressed to the Mine Workers, which I believe is Defendants' Exhibit 1, counsel for the Government on redirect had you read a certain paragraph from that dealing with the proposal on your part for the appointment of an umpire to resolve the question of the vacation payment. Now, isn't it a fact that at all times up to that date, when you so suggested, the mine workers had been urging the acceptance by the Coal Mines Administration of the award made in Illinois? That is a fact, isn't it, Captain?

A. You are talking about the pro rata vacation payment, now?

Q. Yes, sir.

A. Yes, that is correct—that is, at all times after such an award had been made.

Q. That award was made, I believe, in the latter days of August of this year?

A. Yes; but we were not advised of that until, I think, September 9 by Mr. Lewis.

Q. Up until that time, you had not undertaken to——

Mr. Hopkins. I will strike that.

415 By Mr. Hopkins:

Q. Is it not true that from the time you were first made aware of the award in Illinois up to October 21, the Mine Workers had been pressing for the acceptance of such an award by the Coal Mines Administration?

A. Yes, they had.

Q. In reference to your testimony on redirect about the appointment of trustees under Section 4–A of the Krug-Lewis Agreement, is it not a fact, Captain, that during the month of June the mine workers were asking for the appointment of such trustee by the Government—to designate its appointee—that is a fact?

A. To the best of my knowledge, that is true.

Q. And the Mine Workers were pressing and asking for the appointment of a trustee in July, were they not, by the Government?

A. I am not clear in July, Mr. Hopkins, because both conferences were held with Mr. Lewis himself, and it is my memory that he was away on vacation during July and August.

Q. Put it this way, then, Captain: It is a fact that during July and August there was no appointment by the Government of its trustee?

A. That is correct.

Q. You testified, I believe, on redirect that Admiral Boyle
416 had been suggested as trustee to be named by the Government. On what date was that suggestion made?

A. I believe that was made by the Secretary of the Interior to Mr. Lewis on October 19.

Q. On October 19. So it is now your testimony that there had been no affirmative suggestion of the naming of a trustee by the Government from May 29 until October 19?

A. Of the Government's trustee?

Q. Yes, sir.

A. That is correct.

Q. You were asked a number of questions by counsel on redirect as to Section 6, on wages and percentage of increase, if any.

Now, I ask you a question, Captain: Is it not correct that Section 6, dealing with wages in the Krug-Lewis Agreement, was based upon the contract of April 11, 1945, which was carried forward into the new Krug-Lewis Agreement?

A. Yes, that is correct. That set the basic wages.

Q. And that that section standing alone, without the provisions of the old contract, carrying forward, could not have been performed?

A. No, because it was an additional amount, and it had to be additional over something, and the old contract carried forward to provide the basis.

Q. And administered in accordance with the provisions of the previous-existing contract?

417 A. That is correct.

Q. Which was carried forward into the Krug-Lewis Agreement?

A. That is correct.

Mr. HOPKINS. If the Court will indulge me, I think that will conclude our examination.

(Mr. Hopkins conferred with his associate counsel.)

Mr. HOPKINS. That is all.

Mr. SONNETT. The Government has no further questions.

The COURT. Gentlemen, in connection with the brief and other documents last offered by the Government, apparently as part of the redirect examination of the Captain, the Court—I presume you have copies of those papers, briefs, and so on?

Mr. HOPKINS. No, sir, we do not.

The COURT. Will you furnish them?

Mr. SONNETT. I shall be very happy to do so, if the Court please.

The COURT. This is my suggestion: that you furnish copies of those papers which you think are relevant to the issues of this case to counsel, so that they may have an opportunity of—Can you do it between now and tomorrow morning, or do you want more time?

Mr. HOPKINS. If he could point out the pages upon which he
418 relies, so as to eliminate the reading of the lengthy three or four portions, it would expedite it. We would undertake to respond as quickly as time would allow.

Mr. SONNETT. I have one other page of substance, I believe, if the Court please.

The COURT. Suppose you do this, if you think this is practical: Submit copies of the documents to counsel for the defendants and mark what you have already read and such other parts as you had in mind reading, and the Court will hear the defendants as to their admissibility tomorrow morning at 10 o'clock, or whenever the witness who is then on the stand completes his testimony. Is that satisfactory?

Mr. HOPKINS. I think that is satisfactory. We will undertake to comply, Your Honor.

The COURT. All right, gentlemen.

Mr. SONNETT. If the Court please, the Government would now like to make an offer of proof, for ruling by the Court, because should the proof be acceptable, certain mechanical preparations will be necessary during the luncheon recess.

The Government now offers to prove, by the testimony of Alfred O. Eth, of Paramount News, of Washington, D. C., that he is a sound engineer for Paramount News and that, as such, he participated in the taking of certain motion pictures of the defendant Lewis on or about May 29, 1946; that he has with him a film; and that on that film is a sound track, both of which accurately set forth both the
419 features and words of the defendant Lewis at that time and place; that there were two so-called takes of the scene; that in the first take the defendant Lewis said——

Mr. HOPKINS. If the Court please, the defendants do not want to get into the same position they were with your Honor a while ago by allowing the witness to go ahead, unless he is merely making identification of a document, and to read it into the record without objection. There are certain well-directed objections that we think can and should be made.

The COURT. Suppose you look at it, first.

Mr. HOPKINS. We do not want to be in the position of allowing it to go that far when it is merely for identification that he is making the offer now.

Mr. SONNETT. It was done, if the Court please, to make an offer of proof.

The COURT. He is contending that the Court should know something about the article before it can pass upon it. But suppose you look at it, first.

Mr. HOPKINS. Very well. Thank you.

(Mr. Sonnett handed papers to Mr. Hopkins.)

Mr. HOPKINS. If the Court please, after examination, briefly, of the offer made by the Government, the defendants, and each of them, desire to interpose the objection that it is not relevant to the issue involved before your Honor at this time.

420 However, sir, if your Honor finds that it is relevant, and overrules our objection, we stipulate the fact that such statements were made, in order to facilitate this Court without the use of

elaborate preparations. The subject matter will be stipulated as having been said upon that occasion, and it can be offered to the Court.

The COURT. Suppose you let me see it, will you, please?

Mr. HOPKINS. The Government now has it.

(Mr. Sonnett handed papers to the Court.)

The COURT. As I understand it, the defendants say that if this testimony is admissible, it will not be necessary to put a witness on the stand.

Mr. HOPKINS. Yes.

The COURT. If it is admissible at all, you agree that the statement was made?

Mr. HOPKINS. We stipulate that fact under the previous objection first made.

The COURT. I would rather wait, then, until after the recess, to pass upon it, because I have got to think about it a little. It will not be necessary to hold your witness, as I understand it?

Mr. PADWAY. No, not at all.

The COURT. Now, gentlemen, there is one other thing I want to call your attention to. Have the defendants and the plaintiff copies
421 of the testimony—copies of the record of November 25? You have copies somewhere, I suppose. I have it right here; I did not know whether you had it.

Mr. PADWAY. The Clerk has been good enough to hand us a copy. We will use this for the purpose of what your Honor is going to direct our attention to.

The COURT. Yes. I just want to direct your attention to something. The Court desires to have offered tomorrow morning certain statements made in that record, and the Court would call the reporter and ask him if he took the testimony and ask him if he transcribed the testimony correctly, and asked him the additional question, after he has read the testimony, whether or not the individual defendant, either in his individual capacity or in his representative capacity, made any comment on the statements. Now, the statements that the Court will make inquiry about begin on the eighth line from the bottom of page 5, Mr. Sonnett. That statement will go through to the second line of page 8. Then, beginning on page 10 at the fourth line, beginning "Mr. Hopkins," the statement will continue until the sixth line on page 15.

Mr. HOPKINS. Page 15, your Honor? Pardon me.

The COURT. Page 15, yes, sir.

The only other question the Court will ask the reporter is, Did the individual—did the defendant, John L. Lewis, either in his in-
422 dividual or his representative capacity, make any statement throughout the proceedings?

Now, doubtless counsel on one side or the other would make the same offer, but the Court does think it is material, and I am afraid it might be overlooked; that is the only reason it is taken up at this time.

Of course, the reason the Court makes this announcement is that either side may object to the testimony, and the Court gives you an opportunity to make your objection before the testimony is taken, if you see fit. Of course, the testimony is like any other: it is subject to cross-examination by both sides; and, in addition, of course, either side, if it things other parts of the record taken on November 25 are

properly a part of the case, will have an opportunity in the course of their introducing their testimony to introduce such proof as they think is relevant.

Mr. HOPKINS. I do not mean to interrupt your Honor at all, sir. Do I understand, as to the inquiry, that the Court undertakes or is desirous of adopting this procedure immediately upon return from recess?

The COURT. No, sir. The Court is going to do it tomorrow morning, in order to give you an opportunity to read those pages and see whether you have any objection before it is done.

Mr. HOPKINS. If I understand it, the Court is suggesting that he will put the reporter on the stand to verify the accuracy of statements made as transcribed?

423 The COURT. Correct.

Mr. HOPKINS. I was not quite clear, Your Honor, as to whether you had a moment ago adverted to the fact that you might also inquire as to whether certain statements had been made and were omitted, perhaps.

The COURT. No, the only question, outside of what the reporter wrote out, if he so testifies, will be the question whether or not the defendant, John L. Lewis, either in his individual or his representative capacity, made any comment upon those statements, or any of them.

Mr. PADWAY. Would that imply, if the Court please, counsel would be included in that?

The COURT. Sir?

Mr. PADWAY. If counsel made statements on behalf of Mr. Lewis?

The COURT. No, whether Mr. Lewis individually or in his representative capacity. You see, he is sued as an individual and in his representative capacity.

Mr. PADWAY. Yes.

The COURT. In other words, the practical question is whether he made any statement at all, personally.

Mr. PADWAY. Yes. Now, if we, upon reading this record, find that it is correct, and then we concede that it is correct, and that the reporter took it down and correctly transcribed it, that would satisfy Your Honor?

424 The COURT. And concede that Mr. Lewis made no comment.

Mr. PADWAY. Yes. I mean if those were the facts, we could just take it——

The COURT. There is no necessity for putting the witness on the stand.

Mr. PADWAY. That is what I had in mind. Well, we will read this in the afternoon or the evening and will be prepared.

The COURT. It will not be taken up until tomorrow morning.

Mr. SONNETT. If the Court please, may the Government merely state its theory upon which the document which Your Honor proposes to study during the recess is relevant?

The Government believes that the statement of the defendant Lewis at that time and place was relevant to show willfulness, insofar as this contempt proceeding is concerned, in that he there made statements inconsistent with the alleged right to terminate, which he asserted, and which Your Honor directed——

The COURT. Do you mean this document here?

Mr. SONNETT. Yes. I had not stated our theory of relevance.

The COURT. State it over again.

Mr. SONNETT. The Government's theory is that the document is relevant. The words are relevant because they tend to prove that the action of the defendant upon which the Government claims the defendant, or both of them, are in contempt was willful. We
425 think it goes to prove willfulness in that, although directed by this Court to take certain action with respect to canceling the notice of termination, the defendant did not do so, asserting the right to terminate the contract, although the defendant Lewis himself had stated publicly, at a prior time, as this proof will show, that the contract covered for the period of Government operation of the mines. Accordingly, we think it goes to prove and tends to prove willfulness on the part of the defendant.

The COURT. If you gentlemen have anything to say, I will hear you before we adjourn, as to the reason why you do not think it is relevant.

Mr. HOPKINS. I will undertake to state it this way, bearing in mind always the statement made to your Honor a few moments ago, that if your Honor holds it is not relevant, then we stipulate the fact.

This matter that the Government seeks to offer occurred on or about May 29 or May 30 of 1946, six or seven months prior to the issuance of any temporary restraining order, five or six months prior to the exercise by the defendants of their contractual right under their notice of October 21.

It is not pertinent or germane here to the narrow issue before this Court as to whether or not there has been any contempt, your Honor, of your Honor's order of November 18, 1946.

426 The COURT. What you say, as I understand it, is this: that this statement is merely an admission on the part of the individual defendant, John L. Lewis, that the United Mine Workers did enter into the Krug-Lewis Agreement, and that that is all it means.

Mr. HOPKINS. That is right, sir.

The COURT. Just a minute: That is all it means, but it does not mean or is not an admission that it has been violated in any way.

Mr. HOPKINS. That is correct.

The COURT. Is that what you say?

Mr. HOPKINS. That is correct, sir.

The COURT. Is it any more than an admission that the Agreement was entered into?

Mr. HOPKINS. That is all, sir.

The COURT. That is your position?

Mr. HOPKINS. Yes, sir.

The COURT. All right, sir.

Mr. PADWAY. At 1:30 we will probably want to stipulate or we may have something to say with respect to the ruling your Honor will make, but not as to the fact of these statements having been made by Mr. Lewis.

The COURT. Yes, sir—at 1:45, gentlemen.

(At 12:29 p. m. a recess was taken until 1:45 p. m. of the same day.)

427 AFTER RECESS

(The proceedings were resumed at 1:45 o'clock p. m., at the expiration of the recess.)

The COURT. Gentlemen, the Court is of the opinion that there is some question about the admissibility of this paper involving the statement made by the defendant John L. Lewis on May 29, 1946, and that its admissibility may depend upon future developments; the Court won't admit it at this time. The Court will permit the plaintiff to withdraw it and offer it at a later day if it sees fit.

Mr. SONNETT. The Government will be happy to do so, Your Honor.

The CLERK. Yes, sir.

Mr. SONNETT. I will call Mr. Genau.

Thereupon—

JOSEPH A. GENAU was called as a witness for and on behalf of the United States and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. SONNETT:

Q. What is your occupation, Mr. Genau?

A. Special Agent of the Federal Bureau of Investigation.

428 Q. How long have you been so employed?

A. Almost twenty-six and a half years.

Q. On or about November 23, 1946, were you present in the office of the United Mine Workers of America?

A. I was.

Q. Where is that office located?

A. 15th and Eye Streets, Northwest.

Q. Who was present with you?

A. Special Agent Rosser L. Nalls.

Q. Did you have in your possession at that time a copy of the New York Times?

A. I did.

Q. Do you have it with you?

A. Yes, sir.

The COURT. What was that date, Mr. Sonnett?

Mr. SONNETT. November 23.

The WITNESS. That is right.

(A newspaper was handed to Mr. Sonnett by the witness.)

Mr. SONNETT. I will ask the Clerk to mark this for identification as Government Exhibit No. 39.

(Thereupon, the newspaper referred to was marked "Government's Exhibit No. 39 for identification.")

By Mr. SONNETT:

429 Q. When you were at that office at that time, did you have a conversation with a person in the office?

A. I did.

Q. What was the name of the person?

A. Mr. K. C. Adams.

Q. Did you show Government's Exhibit 39 for identication to Mr. Adams?

A. I did.

(Thereupon, Government's Exhibit 39 for identification was handed to defense counsel by Mr. Sonnett.)

Q. Did you have a conversation with him?

A. I did.

Q. Will you state what he said and what you said?

Mr. Padway (interposing). Now, if the Court please, Mr. Adams has not been identified.

The Court. The Court sustains the objection.

By Mr. Sonnett:

Q. Did you examine the door of the office in which you had this conversation?

A. I did not examine the door closely, but I noticed "United Mine Workers' Journal" or some words to that effect thereon.

Q. In the course of your conversation with Mr. Adams did he indicate to you the nature and scope of his duties for the United Mine Workers of America?

430 A. He did.

Q. What, in that respect alone, did he say to you?

A. He stated that he was the editor of the United Mine Workers' Journal.

Mr. Sonnett. I renew the question, if the Court please.

By Mr. Sonnett:

Q. What did you say to him and he say to you at that time and place?

A. I asked Mr. Adams if he had presented copies of the letters from Secretary Krug to Mr. Lewis, and vice versa, to Louis Stark, of the New York Times.

I then submitted this copy of the New York Times, dated November 16, to him and he made a cursory examination and stated that he had no recollection of personally submitting copies of those letters to Mr. Stark, but added that copies of the letters had come to his office from the Heads upstairs who had approved them for publication and in the usual course copies of these letters were placed on the table in his outer office for access to the press.

Mr. Sonnett. I offer Government Exhibit 39 in evidence, if the Court please, pointing out in connection with the offer that this exhibit contains among other things the letter from John L. Lewis to Secretary Krug purporting to terminate the Krug-Lewis Agreement.

The Witness. May I make an addition to that?

431 Mr. Sonnett. Yes, surely.

The Witness. Mr. Adams farther stated that copies of these letters came from the Heads upstairs on the morning of November 15.

By Mr. Sonnett:

Q. And were released on what date to the press?

A. He placed them on the desk in his outer office.

Mr. Sonnett. You may inquire.

Mr. Hopkins. If Your Honor please, I understand the Government is now offering this into the record.

We would like to state for the record our objection, that it is repetitious in major instances. All the documents but one referred

to in this article are already in the record under the Government's own pleading.

The COURT. Which document is it that is not in, sir?

Mr. HOPKINS. It is a letter dated November—it does not show the date, but it is a letter from the Negotiating Committee, United Mine Workers of America, by John L. Lewis, President, addressed to the Secretary of the Interior.

"Dear Mr. Secretary."

The other matters in the paper are already in the record under the Government's own offer attached to the original complaint. In addition thereto, we have no objection whatever to the letter from

432 Mr. Lewis to the Secretary. The original is in the possession of the Government. At least, it is in the possession, presumably, of Secretary Krug.

We see no purpose in offering a newspaper here, sir, that is repetitious in its major part.

The COURT. What is the purpose of this offer, sir?

Mr. SONNETT. The purpose of this offer, if the Court please, is to show that the publication of the document in question, namely, the so-called termination notice given by the defendant Lewis, was as a result of action on the part of the United Mine Workers of America.

Mr. HOPKINS. This exhibit, sir, that is offered does not show that on its face.

Mr. SONNETT. It was a document shown to an employee of the United Mine Workers in connection with a conversation which this witness had with that representative of the United Mine Workers and, as such, tends to confirm the testimony of the witness.

Mr. HOPKINS. We offer, Your Honor, the objection that it is hearsay twofold, twice removed.

If Government desires to prove any statement to the representative of the New York Times, I suppose that representative is available to the Government, but this witness is not capable, in our opinion, of making admissible hearsay documents of this character.

433 The COURT. One difficulty the Court has—I don't see the purpose of it.

The Government has, according to the statements made by counsel, Mr. Hopkins, the Government has already introduced these letters into evidence with the exception of one, which it says the Government has in its possession.

It could offer it if it saw fit to do so.

Is that a fact? Have you that letter?

Mr. SONNETT. That is correct, Your Honor, but the fact that we are intending to establish by this proof is that the publication of these letters or their release to the public was done by the defendants herein and not by anybody else.

Mr. HOPKINS. This does not prove that, Your Honor. This exhibited newspaper is pure hearsay on its face, twice removed.

Mr. SONNETT. We are not offering the newspaper, if the Court please, for its contents. We are offering the newspaper because it was shown by the testimony of this witness to an employee of the defendant United Mine Workers of America.

The COURT. What you say now, sir—I mean, what I understand your offer now is, that it is to show simply not the fact of the letters,

because you have already offered evidence of the facts, but of the further fact that they were released to the press and the public
434 by the defendants and not by the Federal Government.

Mr. SONNETT. That is our purpose, Your Honor.

The COURT. Now, what is your view about the bearing that that fact has upon the issues in the case?

Mr. SONNETT. Because we think that the public release and distribution of this notice of termination—of alleged termination—under the proof which we will introduce or offer, was equivalent to a call to the miners to strike in the seized mines.

Mr. PADWAY. If that be the case, may it please the Court, then——

The COURT. Just one minute, Mr. Padway.

Was it your claim that the publication in the newspapers was a notice to them, or that they received a notice?

Mr. SONNETT. Both, Your Honor. That the publication in the newspapers was notice to them, and to the rest of the public, and, secondly, that they did receive such notice in specific cases concerning which we will offer proof.

The COURT. I will hear you, Mr. Padway.

Mr. PADWAY. I was going to say this. Where is the materiality of this paper? I notice it is dated November 16, 1946. Your Honor made no order until November 18.

Now, are we to infer by the Government's contention
435 that Mr. Lewis or anyone else was inhibited or prohibited or enjoined from issuing anything? Now, that is assuming that Mr. Lewis or any of their employees released it. I am not making that concession.

The COURT. Assuming what, sir?

Mr. PADWAY. I say only assuming, without conceding, that the United Mine Workers or any of its employees released these letters. What difference does it make?

The issue here is November 16, 1946.

There was nothing to prohibit that. There had been days before discussions of a coal strike in the papers back and forth.

What materiality has it to the issues in this case?

The COURT. Mr. Padway, I don't follow you on that argument if it is with respect to the issuance of that notice which induced the Government to institute proceedings in the nature of a mandatory injunction for the revocation of the notice.

Mr. PADWAY. It is not what induced the Government to ask for an injunction. It is a question of the fact. Did it ask for an injunction? Did the Court issue an injunction?

What happened to the issuance of it?

436 The COURT. The Court will overrule that objection, Mr. Padway.

Mr. PADWAY. If this is going to be admitted in evidence then I want to object——

The COURT. It is admitted in evidence, Mr. Padway, for the sole purpose of evidence that the United Mine Workers of America did issue a notice that the Krug-Lewis agreement between the Federal Government and the United Mine Workers was no longer in force, and was terminated. Is that your purpose?

Mr. SONNETT. That is our position, if the Court please.

The COURT. All right; the Court admits it for that purpose.

Mr. PADWAY. If it is going to be admitted at all I should like the record to show that there are news items pertaining to the coal situation on the first page, in a three-column spread, and also other news items below the columns that contain the letters, we ask that the Court state on the record that they are not being admitted, the comments of newspaper reporters and writers, and that the record be not encumbered with a matter of that nature.

The COURT. The Court thinks that a proper suggestion.

437 Mr. SONNETT. I agree with it, Your Honor, and the Government's offer is intended to relate to that page of the newspaper and to that portion of that page which contains the text of the letters in question.

The COURT. All right, sir.

Mr. SONNETT. You may inquire.

Mr. HOPKINS. No questions, Your Honor.

The COURT. Are you through with the witness?

Mr. SONNETT. I am through with the witness; yes.

(Witness excused.)

Mr. SONNETT. If the Court please, the Government offers in evidence Government's Exhibit 40, consisting of photostatic copies of the United Mine Workers Journal, certified by the librarian of the Library of Congress, to the extent that certain portions of the documents to which I shall now refer are offered specifically by the Government:

The first is that portion of the United Mine Workers Journal of June 1, 1946, at page 10.

The second is that portion of the United Mine Workers Journal of August 15, 1944, at page 5. Both of these are with respect to the "No contract, no work" policy of the United Mine Workers as alleged in our complaint.

The COURT. What is the date?

Mr. SONNETT. The date of the first one offered is June 1, 1946, at page 10. The second is August 15, 1944, at page 5.

438 Mr. HOPKINS. 1944?

Mr. SONNETT. That is right.

Mr. HOPKINS. Reserving the right to object, Your Honor, we would like to examine the documents which we now understand are being tentatively offered.

Mr. SONNETT. May the record further indicate, Your Honor, that our offer is limited to the portions of those papers circled in red to which I have directed counsel's attention.

Mr. HOPKINS. Do I understand Government now makes offer of the exhibits?

Mr. SONNETT. Those portions circled in red to which I have directed your attention, Counsel; yes.

Mr. HOPKINS. To which, for the record, Your Honor, we object on the ground it is not relevant to the issue now before this Court; the date of one excerpt so offered being June 1, 1946; the date of the other excerpt being August 15, 1944. We object to the introduction of them on the ground of relevancy to the issue here.

The COURT. Let me see them, please, sir.

(Counsel for the Government hands documents to the Court.)

The COURT. I only see one red circle here. Is there more than one?

Mr. SONNETT. There is another, Your Honor. The
439 other edition has a tab on it, if I may point it out to the Court. It is on a different page.

The COURT. All right. Gentlemen, the Court doesn't have much difficulty here. These exhibits are objected to on the ground that they are not relevant to the issues in this case. The Court overrules the objection.

Mr. HOPKINS. If the Court please, then do we understand that the record won't be burdened with the whole exhibit but only the excerpts as such?

Mr. SONNETT. That is all that the Government offered, if the Court please.

Mr. HOPKINS. Thinking of the size of the record here, and if that could be done that would be helpful in holding down its volume.

Mr. SONNETT. May I, for the sake of the record, if the Court please, read from page 10 of the United Mine Workers Journal for June 1, 1946, in part as follows:

"The economic creed of the UMWA—'No contract, no work'—effectively employed, constitutes an educational institution. A 'dim-out' is a 'lockout.' But the tuition in that school is pretty costly for both the miners and the public. Coal miners cannot afford to pay the toll at every period of contract expiration to reeducate the pavement peasantry of our big cities, a few small towners, and
440 some ruralities who have always been too prone to let the miners fight their own battles alone."

The second portion is from the issue of August 15, 1944, page 5, an article by John L. Lewis, which states in part:

"It was the Policy Committee, by unanimous vote, that rejected the jurisdiction of the War Labor Board and demanded the resumption of collective bargaining. The demand was not heeded, and when the thirty-day extension ended on April 30, the miners laid down their tools. This is our historic and automatic procedure. For 53 years a contract has been our protection against rapacity and ill faith. No contract, no work. No stoppage order ever goes out. If a new agreement has not been signed before the expiration of the old, the men quit. Nevertheless, we were not careless of the national interest, for we knew that there were 79,000,000 tons of bituminous coal in storage."

Mr. SONNETT. Call Lieutenant-Commander Acheson.

Thereupon—

Lieut. Commander HAMILTON ACHESON was called as a witness for and on behalf of the Government; and, having been first duly sworn, was examined and testified as follows:

441 DIRECT EXAMINATION

By Mr. SONNETT:

Q. Commander Acheson, what is your occupation?

A. I am Officer in charge of the Iowa Subarea Coal Mines Administration.

Q. And you are a Lieutenant Commander of the United States Navy, are you not?

A. Navy Reserve.
Q. On active duty as such?
A. Yes, sir.
Q. Where is your office located in Des Moines?
A. Room 121, Old Federal Building, Des Moines.
Q. And what are your duties?
A. I am to carry out the instructions of the Officer in Charge at Chicago.
Q. On or about Friday, November 22, were you present at the Jensen Coal Company's Fraser Mine at Fraser, Boone County, Iowa?
A. I was.
Q. I show you Government's Exhibit 41 for Identification, Commander, and ask you whether you saw that at that place; and if so, where?
A. I did. It was on the bulletin board in the wash house.
Q. Do you of your knowledge know who posted it there?
442 A. I do not.
Q. Was it posted there pursuant to any instruction or order of yours?
A. It was not.
Mr. SONNETT. I offer it in evidence.
Mr. HOPKINS. May we see it?
(Government counsel hands exhibit to counsel for the defendants.)
Mr. HOPKINS. No objection, Your Honor.
(Envelope and letter addressed to Richard Brown marked "Government's Exhibit No. 41" and received in evidence.)
Mr. SONNETT. If the Court please, Government's Exhibit 41, in evidence, consists of an envelope with an air-mail stamp, Washington, D. C., November 16, 1946, 2 P. M., addressed to Richard Brown, 1039–13, Fraser, Iowa, with a return address as follows: John L. Lewis, United Mine Workers Building, Washington 5, D. C.
The letter is a letter on the stationery of the United Mine Workers of America dated November 15, 1946, reading as follows:
"*To the Members of the United Mine Workers of America, Greetings:*
"The following is the exact text of a letter sent to the Secretary of the Interior, in charge of Coal Mines Administration:
"NOVEMBER 15, 1946.
"Honorable J. A. KRUG:
443 "*Secretary of the Interior,*
"*Washington, D. C.*
"DEAR MR. SECRETARY: In accordance with the provisions of the Krug-Lewis agreement dated May 29, 1946, the United Mine Workers of America on October 21, 1946, officially requested a joint conference of the accredited——
The COURT. Officially did what?
Mr. SONNETT:
"officially requested a joint conference of the accredited representatives of the joint contracting parties to said agreement. Such conference convened on November 1, 1946.
"15 days have now elapsed since the beginning of said conference; the United Mine Workers of America, exercising its option,

hereby terminates said Krug-Lewis agreement as of 12 o'clock p. m. midnight, Wednesday, November 20, 1946.

"Yours truly,

"UNITED MINE WORKERS OF AMERICA,
"By JOHN L. LEWIS, *President*.

"The foregoing is for your official information.

"Sincerely yours,

"JOHN L. LEWIS, *President*."

444 Mr. SONNETT. You may inquire.

Mr. HOPKINS. We have no questions.

(Witness excused.)

445 Thereupon—

Lieutenant Commander R. H. BEHNKE was called as a witness on behalf of the United States and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. SONNETT:

Q. You are a Lieutenant Commander of the United States Naval Reserve?

A. Yes, sir.

Q. On active duty?

A. Yes, sir.

Q. What is your present assignment, Commander?

A. I am Officer in Charge of Area 1, Sub-Office of Fairmont, West Virginia, of the Coal Mines Administration.

Q. What are your duties there?

A. To carry out the orders of the Area Officer in Charge.

Q. How long have you been engaged in that occupation?

A. Since the 28th of May of this year.

Q. On or about November 19, 1946, were you at the Pittsburgh-Consolidated Company Mine 98, located near Enterprise, West Virginia?

A. I was.

Q. I show you Government Exhibit 41, that portion of it
446 which is a letter, and ask you to examine it and state whether at the time and place mentioned by you you saw such a letter.

Mr. HOPKINS. If your Honor please, if I may interpolate here, if counsel for the Government is offering an identical exhibit to that which he offered by the preceding witness, the defendants are willing to stipulate that the notice addressed to the Mine Workers, as set out in the previous exhibit, was sent out on November 15, which is the date appearing on the top of that circular. If he is offering now the same thing in repetition of what he has previously offered, we agree to stipulate that that notice or communication or circular did go out from the Mine Workers' office on November 15.

The COURT. When you say "Mine Workers," do you mean in just this one instance, or in all instances?

Mr. HOPKINS. In this instance. There is no need to go beyond that. I do not know how far he is going to offer anything else.

The COURT. I just want to understand what you said; that is all.

Mr. SONNETT. If the Court please, I do not know whether counsel for the defendants' offer to stipulate will suffice or not. If the stipulation is a stipulation to the effect that that notice was posted, in addition to the places already mentioned, at Fairmont, West Virginia——

Mr. HOPKINS. We make no stipulation there. I am merely
447 offering to stipulate that the circular went out from the Mine Workers' membership on November 15, 1946.

Mr. SONNETT. That much the Government is quite willing to take, but it is insufficient to meet the proof which we propose to offer.

Mr. HOPKINS. For what other purpose, may I inquire, your Honor, is it desired to offer it?

Mr. SONNETT. We desire to prove——

The COURT. Just one minute. The Court is not sure he understands the scope of your admission, sir.

Is it your admission that a general notice was sent out to bituminous coal operators who were under the jurisdiction of the United Mine Workers of America, or simply that this particular notice was sent out?

Mr. HOPKINS. On November 15. We offer to stipulate, your Honor, that general notice addressed to the members of the United Mine Workers of America, quoting the letter of November 15 to the Secretary of the Interior Krug, was on November 15, 1946, sent out by the United Mine Workers of America to its membership.

Mr. SONNETT. The Government accepts that stipulation, if the Court please.

I have no further questions, Commander.

Mr. HOPKINS. No questions on the part of the defendants.

(The witness left the stand.)

448 Mr. SONNETT. Does the stipulation, if the Court please, extend to Government Exhibit 41—that is, to the text of it—which is in addition to the exact text of the Krug-Lewis Agreement?

The COURT. You may ask him.

Mr. HOPKINS. Yes.

Mr. SONNETT. Then, the Government is happy to accept the stipulation, if the Court please.

The COURT. Did you say something was in addition?

Mr. SONNETT. There is an introductory sentence and a closing sentence, if the Court please, in the letter, in addition to the exact text of the termination or alleged termination notice.

The COURT. I understand.

Mr. SONNETT. Would you call Dr. Parker, please?

Thereupon—

Dr. GLENN L. PARKER was called as a witness on behalf of the United States and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. SONNETT:

Q. Dr. Parker, what is your position?

A. Chief of the Prices and Markets Subsection of the Coal Economic Division of the Bureau of Mines.

Q. Of the Department of the Interior?

449 A. That is right.

Q. What is your educational background?

A. I received a B. A. degree from the University of Texas in 1930, an M. A. degree in 1931, and a Ph. D. degree——

By the COURT:

Q. They stopped the Latin then? It used to be A. B. and A. M.

A. That is correct.

Q. All right.

A. And a Ph. D. degree in 1939, the last of which degrees was in economics.

By Mr. SONNETT:

Q. What has been your experience, Doctor?

A. From 1935 to 1937 I taught economics in the University of Texas. From 1937 to 1939 I taught economics and finance in the University of North Dakota. From 1939 to 1941 I taught economics and finance in Ohio University.

On November 15, 1941, I came to work for the Bituminous Coal Division of the Department of the Interior, and I stayed with the Bituminous Coal Division until the expiration of the Act, August 23, 1943.

During that time I served as an assistant to the chief economist of the Economic Branch—part of the time—and the rest of the time as an analyst for the Economic Branch.

On August 24 I started work for the Solid Fuels Administration as chief of the Price Unit, and then in May, 1944, I became chief of the Prices and Markets Subsection in the Bureau of Mines.

450

451 Q. What are your duties in your present position, Doctor?

A. To make economic studies of the bituminous coal industry, including such things as production, consumption, and various other requirements; stocks, employment, prices, costs, distribution.

Q. Doctor, in your official capicity, have you examined the information available to you with respect to bituminous coal production in the United States during the years 1945 and '46?

A. I have.

Q. And have you prepared a chart that sets forth accurately that information in graph form?

A. I have.

Q. Have you also, Doctor, prepared a chart showing employment in the bituminous coal mines in the United States during the year 1946 up to approximately the middle of October?

A. I have.

Q. Have you similarly prepared a chart showing the daily United States production of bituminous coal and the number of miners reported to be idle covering the period November 1 up to approximately November 23, 1946?

A. I have.

452 Mr. SONNETT. I would like, if the Court please, to offer these charts in evidence, and because of their size, to ask the Marshal to put them on the blackboard so that counsel can examine them and the Court simultaneously.

Mr. HOPKINS. If Your Honor please, as I understand the offer of exhibits by Government just made, they are statistics with reference to coal production and coal consumption and the number of men employed, etcetera. We most respectfully object, for the record, Your Honor, to their admissibility.

They are neither pertinent, germane, nor relevant to the issue on trial before Your Honor at this time.

If they are relevant at all, they must, per se, become relevant upon the trial of the case, to-wit, the declaratory judgment proceeding, the action in chief as filed by the Government here.

We are not trying a preliminary injunction. We are not trying this case on its merits under the bill of complaint, nor the declaratory judgment. The narrow issue before Your Honor is one of contempt, we respectfully submit. These documents and exhibits are neither relevant, germane, material, or pertinent.

The COURT. Mr. Hopkins. You see, the Court ruled on your motion to vacate the rule to show cause, the Norris-LaGuardia Act did not apply.

453 Now, on tomorrow morning the Court—as the Court has notified counsel—will offer evidence tending to show that the defendants did not obey the provisions of the restraining order passed by the Court.

Now, then, if this testimony which the Court intends to offer tomorrow morning establishes that fact, that would appear to leave the defendants in the position at least of a technical contempt of court or a violation of the restraining order.

So that if your position now were correct, there is very little in this particular case to be shown on either side.

Now the Court is admitting this sort of testimony—and the testimony the Court admitted for you on cross-examination last week—for the purpose of showing the extent of the contempt.

I don't mean that that is necessarily the only purpose because the Court has not passed actually or mentally on the question of contempt yet, but certainly the extent of the contempt, the kind of the contempt, the consequences of the contempt, if there was one, are all relevant to the question of what the punishment should be if there was a contempt.

Now, that is what I suppose you are offering it for.

Mr. SONNETT. That and in addition, Your Honor, to demon-
454 strate to this Court by witnesses subject to cross-examination the irreparable injury against the continuance of which we seek also a temporary injunction.

The COURT. The irreparable injury and the extent of the contempt amount to the same thing.

Mr. SONNETT. Yes, Your Honor.

The COURT. The Court overrules your objection, gentlemen.

(Thereupon, the charts referred to were marked "Government's Exhibits for identification 45, 46, and 47" and were thereupon received in evidence.)

By Mr. SONNETT:

Q. Doctor, examining that chart, which is Government's Exhibit 45, will you state to the Court and point out what information it conveys?

A. This chart, the upper section of this chart, shows the production of bituminous coal by weeks for 1945 in the black line. The red line shows production by weeks for 1946, and the green line shows production by weeks for 1946 of mines that were under seizure on the 15th of November, 1946.

Q. The period, Doctor, at which both the red and the green lines dropped down almost to zero on that chart is what period?

A. That is in April.

Q. Of what year?

455 A. It is the weeks ending April 6, 13, 20, 27, and the 4th of May and the 11th of May.

Q. Of what year, Doctor?

A. 1946.

Mr. SONNETT. All right, will you place the next one before the witness and Court, gentlemen, please?

(Thereupon, Government Exhibit 46 was placed in an elevated position before Court and counsel.)

By Mr. SONNETT:

Q. Doctor, will you state for the Court what chart 46, Government's Exhibit 46, demonstrates?

A. This chart shows the employment in bituminous coal mines in the United States, average monthly employment, that is. The black line shows all mines and the red line shows mines that are under seizure as of November 15, 1946.

Q. Now, the sharp drop in that chart, Doctor, in the middle of April 1946, indicates what in terms of number of employees in the coal mines during that period of 1946?

A. It shows that there were very few men at work during April. The total, if you could read the chart that accurately, would show 62,000.

The other line is only a part of that.

456 Mr. SONNETT. Now, gentlemen, can we have the next chart put up before the Court and the witness?

(Thereupon, Government Exhibit 47 was placed in an elevated position before Court and counsel.)

By Mr. SONNETT:

Q. Referring, Doctor, to Government's Exhibit 47, will you state what that chart demonstrates?

A. Government's Exhibit 47 shows two things for the period November 1 through 23, 1946. It shows the daily production of bituminous coal on the red line and on the black line it shows the number of miners reported idle.

Q. Now, does that chart show, Doctor, that on November 20, 1946, the number of tons of coal, bituminous coal, produced fell sharply and continued to fall and the number of miners reported idle continued to rise abruptly?

A. That is correct. It shows that.

Q. Does it show the number of miners idle on or about the 23rd of November 1946?

A. Yes, sir, it does.

Q. And how many, approximately, were reported idle at that time?

A. That was about 340,000.

Q. And how many tons of coal were produced at that time?

A. A little over 200,000 tons.

457 Q. Doctor, on the basis of your official experience, are you able to state what, in your opinion, is the importance of coal, bituminous coal, to the economy, health, and safety of the nation?

A. Yes, sir.

Q. Will you state what your opinion is and furnish your reasons for that opinion?

Mr. HOPKINS. To which, if Your Honor please, the defendants respectfully interpose an objection.

This witness has not shown himself qualified as an expert on the question of the impact on the economy of the whole United States as to the use of coal and the time of its use. I further suggest, Your Honor, that that is neither pertinent, germane, nor relevant.

The COURT. Your view is that the general public, insofar as the evidence shows, are as well able to estimate the effect of the coal shortage as this witness.

That is what you are saying, isn't it?

Mr. HOPKINS. I just submit that this witness—the question is asking for the conclusion of a witness who has not qualified himself as being competent to testify on it.

The COURT. You and I have said the same thing, I suppose. You have said it a little differently.

I think probably the objection is well taken, sir.

458 Mr. SONNETT. It is our view, most respectfully, Your Honor, that this witness has been qualified as an expert. Should counsel for the defendants desire to cross-examine him as to his qualifications, I am happy to yield to them at this time for that purpose.

The COURT. Well, suppose you examine him further, if you desire, as to his qualifications on the question of the economic effect of this depletion in the supply of coal, if it continues.

By Mr. SONNETT:

Q. Doctor, what were the coal supplies on hand as reported by the official information in your possession on November 20, 1946?

A. About 76,000,000 tons.

Q. Now, as a matter of regular official business have you, while in the Government employ, received information relating to the amount of bituminous coal on hand at various times.

A. Yes, sir.

Q. And have you in the matter of the performance of your official duties had occasion to learn the purposes for which that bituminous coal was used by the nation?

A. Yes, sir.

Q. How do you get that information, Doctor, in the course of your official business?

459 A. Well, the Bureau of Mines receives reports from various consuming groups; some of them directly from those consuming groups and some of them through such organizations as the Association of American Railroads and the Federal Power Commission.

Q. Are you able to state on the basis of your past experience, including your experience during April in 1946, what the probable rate of

production of bituminous coal from now on will be, assuming that the current work stoppage continues?

A. Yes, sir.

Q. What, in your opinion, will that production be?

A. It would be about 658,000 tons a month—I mean a week.

460 Now, Doctor, are you able to state what percentage of the normal production of the bituminous coal in this country that production represents?

A. On the basis of very recent production figures—that is, just before the current stoppage started—I would say it would be around about twelve and a half million tons a week and that that would figure out to be about five and three-tenths percent.

Q. Now, Doctor, in the course of your official duties in the past, have you received information as to the requirements of various industries for bituminous coal?

A. Yes, sir.

Q. On the basis of that information and on the basis of your expert opinion, what would be the normal requirements of bituminous coal over the next three months for total consumption in the United States?

A. It would average for the next three months not quite 54 million tons a month.

Q. How long, in your opinion, would the supply of bituminous coal now available and to be produced last, assuming continuance of the current work stoppage and assuming the use of coal at a minimum rate of usage?

Mr. HOPKINS. If the Court please, before he answers that, I should like to interpose this objection. Counsel is asking the over-all

461 question as to how long certain coal stocks would be available assuming normal consumption. We object to that on the ground that this witness has not stated, and neither does he undertake, so far as we understand him, to state, that he knows where all these supplies are, and whether stoppage would occur in Iowa or Pennsylvania or in X town in Alabama. In other words, coal stocks are not evenly divided.

Now, if counsel is asking the question as to how long coal stocks will last, we submit that that is not a proper question here unless this witness further qualifies himself as to the location of these stocks.

The COURT. Well, of course, there may be some validity in that, but transportation facilities in the country are of such a character that coal has to be taken from one place to another. I suppose it could be done, Mr. Hopkins. Isn't that true?

Mr. HOPKINS. I am sure that is true in the normal course of events. I merely point out here, again, that we do not think any of this is pertinent or relevant for the additional reason that he is asking for the pure conclusion of the witness here based upon only general information rather than specific.

The COURT. The Court does not agree with you, sir. Proceed.

Mr. SONNETT. Mr. Reporter, will you please read the last question?

462 (The last question was read by the reporter as follows:)

"Question. How long, in your opinion, would the supply of bituminous coal now available and to be produced last, assuming con-

tinuance of the current work stoppage and assuming the use of coal at a minimum rate of usage?"

The WITNESS. Until about March 1, 1947.

By Mr. SONNETT:

Q. What would happen then, Doctor?

A. Well, the economy would suffer a collapse at that time.

By the COURT:

Q. Do you mean, Doctor, that if the economy used all the coal that it would desire to use under normal conditions of production, the present supply of coal would last until March?

A. No, sir; he asked me——

Q. I am asking you the other question.

A. Well, it would quite obviously run out much sooner than that.

Q. Have you any definite opinion, based on facts, as to when it would run out?

A. Well, of course, the coal stocks are unevenly distributed, and it might be that in the normal course of events some consumers would still have considerable stocks while others would be completely
463 out. Now, if it were all to be treated as a pool and everybody were to use all the coal he normally would use, then the stocks we had on hand on November 20 would last about 37 days.

The COURT. Proceed, sir.

Mr. SONNETT. I have no further questions, if the Court please.

You may inquire, gentlemen.

Mr. HOPKINS. No cross-examination, your Honor.

Mr. SONNETT. No further questions.

(The witness left the stand.)

Mr. SONNETT. Call Dr. Hauser, please.

Thereupon—

Dr. PHILIP HAUSER was called as a witness on behalf of the United States and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. SONNETT:

Q. Dr. Hauser, what is your position?

A. I am Assistant Director of the Census Bureau, and I am detailed to the Department of Commerce as Assistant to the Secretary.

Q. What has been your prior experience, Doctor?

A. I have been in Government service for about 12 years. Before that I taught at the University of Chicago and was connected
464 with a number of research projects—social science and research work—and occupied various other professional posts before coming into the Government service.

Q. Will you state, Doctor, what your prior governmental experience has been prior to your present assignment?

A. Yes. I was Assistant Director of the Census Bureau for about three or four years; before that, Assistant Chief of the Population Census—housing census—during the decennial census period.

Q. What is your educational background, Doctor?

A. I have a Ph. D. from the University of Chicago.

Q. In the course of the performance of your official position, Doctor, does there come to you regularly official information of the Department of Commerce with respect to the commerce of the country?

A. Yes; various reports prepared by the constituent offices and bureaus of the Department come to my office, generally for analysis and assembly for the Secretary of Commerce.

Q. On the basis of those reports and your past experience, Doctor, are you able to form an opinion on the question of the dependence of the industry of the United States on coal production?

A. Yes. I think it rather clear that two of the rather outstanding characteristics of our economy make it peculiarly vulnerable to the stoppage in coal production.

465 In the course of the years, our economy has grown greatly dependent on machines in lieu of manpower and is, therefore, dependent on sources of energy to make the machines run.

Also, with the extreme division of labor we have, there is great interdependence of every part of our economy upon the other. There is a long chain of supply between raw materials, on the one hand, and finished consumer good or service in the hands or available to the consumer, on the other, and that long chain of supply is only as strong as the first link which breaks.

Now, without question, coal is a very fundamental link in that long chain of supply, both as a source of energy and as a basic industrial material.

Q. Doctor, on the basis of the official information received by you, can you state what percentage of all the energy produced in the United States is produced from coal?

Mr. HOPKINS. Just a second. For the purposes of the record, if Your Honor please, let the defendants' objection to the question be stated; that this testimony is neither germane, pertinent, nor relevant to the main issue of the matter now before Your Honor, and we respectfully object to its admissibility for these reasons: The main issue, the narrow issue now before Your Honor being one of alleged contempt. Therefore, Your Honor, we submit again that the matters here, if admissible at all, are admissible upon the trial of the case in chief and not on the narrow issue now before Your Honor, and

466 we object to its relevancy.

The COURT. I will overrule the objection. Proceed.

Mr. SONNETT. Mr. Reporter, before you go, will you read the question?

(The last question was read by the reporter, as follows:)

"Question. Doctor, on the basis of the official information received by you, can you state what percentage of all the energy produced in the United States is produced from coal?"

467 A. Yes. Despite the increasing importance of natural gas and petroleum and waterpower, about 43 percent of all energy produced in the United States today comes from bituminous coal.

By Mr. SONNETT:

Q. Can you, by reference to the official information available to you, and by reference to certain of the basic industries in the country, state the extent to which various of the basic industries of the country are dependent upon coal?

A. Well, three of our most basic industries would certainly be the railroads, the utilities, and steel.

These industries may be called basic primarily because much of the rest of our industrial structure is dependent upon the functioning of these three industries. The dependence of these basic industries on coal is attested to by the fact that about four-fifths of all energy used in driving locomotives, for example, on Class 1 railroads is derived from bituminous coal.

About four-fifths of all fuels and energy-producing material used in the production of steel is derived from bituminous coal.

Over half of all energy used in the production of electric power by the utilities is derived from bituminous coal.

468 About four-fifths of all energy obtained from fuel for electric power is derived from bituminous coal.

The dependence of these industries on coal is further attested to by the fact that over 80 percent of Class 1 railroads would have to shut down within 60 days.

Over three-fifths of the utilities, and steel both, would have to shut down in 60 days because of their dependence on coal as a source of energy.

Q. Can you state, assuming a continuance for 60 days of the current work stoppage, what would be the effect on employment generally?

A. Yes. We have made some estimates of the impact of a continued coal stoppage on the economy.

We estimate that at the end of a 60-day period there would be a decline in total production of about 25 percent, estimated on a conservative basis, and that would be accompanied by an unemployment of 5,000,000 full-time workers. Of course by the end of that period the effect would be snowballing and would be accumulating upward at a very rapid rate.

Q. On the same assumption, namely, a continuance of 60 days, can you estimate what would be the drop in the annual rate of national income?

A. Yes. The national income which is our best basic measurement of over-all economic activity would, within 60 days, decline from
469 a present rate of approximately 170,000,000,000 per year to a rate of 150,000,000,000 per year.

Q. And what would be the monthly rate of loss of income paid to workers resulting from a 60-day stoppage?

A. It would conservatively amount to a loss of approximately a billion a month, at the rate of a billion a month, in wages and salaries by the end of the 60-day period, and rapidly mounting.

Q. The total loss of national income during the first 60 days, assuming a continuance of the current work stoppage, Doctor, would be, in your opinion, what?

A. The total loss in national income, the decline in rate from 170 to 150 billion would amount to an average rate of decline of about six or seven billion, and, for the two months' period would result in a net loss of around a billion to a billion and a quarter dollars during the first 60 days. That would be a fraction of the loss in total national income as a result of a prolonged coal shortage.

Q. Doctor, are you familiar with the requirements of industry in terms of reconversion from wartime to peacetime production?

A. Yes.

Q. Can you on the basis of your familiarity with those requirements state what would be the effect upon reconversion, assuming a continuance of the current stoppage?

470 A. In general, yes. The present stage of our industrial activity—as you know we are just coming out of the most severe industrial dislocation in the history of our economy, and——

Mr. HOPKINS. If the Court please, not intending any disrespect to the witness, and not intending to object, but it is apparent that the question asks for and is receiving a most speculative answer.

Statements of fact are one thing, and pure speculation in the realm of hearsay, and in futuro occurrences that no man conceivably can know all about, we submit are pure speculations, conclusion of the witness, and calls for a pure opinion only, not based upon information that is now available but can only become available in futuro.

The COURT. I am beginning to wonder myself whether the witness hasn't gone as far as he should. What do you think, Mr. Sonnett?

Mr. SONNETT. I am willing, if the Court please, to rest at this point with this witness.

The COURT. All right.

Mr. SONNETT. You may inquire, gentlemen.

Mr. HOPKINS. No cross-examination, Your Honor.

(Witness excused.)

Mr. SONNETT. Will you call Mr. George C. Haas?

471 The COURT. The Court will take a five-minute recess at this point.

(Short recess.)

472 Thereupon—

GEORGE C. HAAS was called as a witness for and on behalf of the United States and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. SONNETT:

Q. Mr. Haas, what is your position?

A. I am Director of Research and Statistics of the Treasury Department.

Q. And as such, what are your duties?

A. I have general charge of matters relating to fiscal analysis, and among them are the estimating of the Federal revenues. Estimates are made for the President's Budget messages and for various uses in the fiscal operations of the Treasury Department.

Q. On the basis of your official experience, and the information which you received in the course of your official duties, can you state whether, in your opinion, there would be any effect on Federal revenue resulting from a continued stoppage in bituminous coal production?

Mr. HOPKINS. Before you answer, if it please the Court, the defendants desire to interpose the objection that this is not material, the answer sought to be elicited under the question just propounded

473 because it is not material to the issue before Your Honor. It is not relevant.

The narrow question being here, as has been previously stated, we respectfully submit over that objection, this information in the answer now sought is neither relevant, nor material, nor germane.

The COURT. Mr. Hopkins, the Court does not know what testimony will be developed. The Court has not any idea what testimony will be developed by the defendant.

The defendant may be able to develop testimony that will extricate himself entirely from this contempt charge. The Court does not know anything about that and has no opinion about it.

But it does seem to the Court that in taking the testimony on both sides, an effort should be made to find out just the extent, if there is any contempt, of the contempt, and that involves the economic results of the stoppage of the coal production and that involves, of course, from your standpoint the question as to whether or not there was an honest conviction that this contract was terminated, and anything else that you can show.

Now, the Court thinks that in this matter which is so important and of so much interest to the people of this country and the people of the world, that the Court should not take a narrow view of the scope of the evidence.

474 Of course, it is perfectly apparent that the Court has no right to receive incompetent evidence, but the Court does not think this is incompetent, and the Court thinks that in view of the fact that the extent of the culpability, if any, is a very material question, it is proper for it to go into the record, and that is the reason the Court is letting it in.

Mr. HOPKINS. Very well, sir.

The COURT. And that is the reason the Court is letting in that sort of testimony on behalf of the defendant when the time comes for the defendant to introduce his evidence.

Mr. HOPKINS. For the purposes of the record only, we object on the additional ground that this is a hearing and a hearing alone upon the narrow issue of contempt and not upon the motion for preliminary injunction.

The COURT. Yes, sir.

Mr. SONNETT. Would the stenographer read the question?

The REPORTER (reading):

"Q. And based on your official experience and information which you received in the course of your official duties, can you state whether or not, in your opinion, there would be any effect on the Federal revenue resulting from a continued stoppage in bituminous coal production?"

The COURT. Proceed, sir.

475 The WITNESS. Any factor which will adversely affect income payments will affect Federal revenues.

The effect in Government receipts is not in all cases immediately, but the effect on tax liabilities is immediately. You are well aware that many taxes, as provided by statute, provide for a lag in the payment.

For example, corporation taxes are due the following March in quarterly payments, so there is considerable lag there.

Others come in more current. For example, stamp taxes are almost current, and others have a month or two lag, and so on.

But the effect on tax liabilities and ultimately tax collections is without question. In my mind the extent which revenues might be affected by various changes in income payments may be ascertained from some figures which I am about to give. This computation was made for another purpose, but will serve this purpose, it seems to me.

We made an estimate of the yield of the total Federal tax structure at about current levels of income payments and then we made another estimate assuming that income payments would be about $10,000,000,000 less than they are today. The difference in the tax yield applied to the total Federal tax structure between those two would amount to about $2,800,000,000.

476 Now, the arithmetic of that is that for each decline in the dollar of income payments, tax revenues will decline about 28 cents. That means, carrying the arithmetic table a little further, it would mean that a billion-dollar decline in income-tax payments would result in a decline of tax revenues about $280,000,000.

A five-billion-dollar decline in income payments would result in a decline of one and four-tenths billion dollars. And, as I said before, a ten-billion-dollar decline would result in a two-billion-eight-hundred-million-dollar decline in Federal revenue.

By Mr. SONNETT:

Q. Do you have that table with you, Doctor?

A. No, sir; I am sorry, I don't have it with me.

Q. Assuming that there would be a loss in national income payments of one million dollars—withdraw that—one billion dollars, as a minimum: assume that, if you will. What would be the loss to the Federal treasury?

A. On that assumption I think the carrying out of my table, I am not sure that I put that particular figure in, but that would be $280,000,000.

Mr. SONNETT. You may inquire, gentlemen.

Mr. HOPKINS. No cross-examination, Your Honor.

The COURT. Very well, sir.

Mr. SONNETT. No further examination.

The COURT. Step down, sir.

(The witness left the stand.)

477 Mr. SONNETT. Will you call Mr. Krug, please.

Thereupon—

JULIUS A. KRUG was called as a witness for and on behalf of the United States and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. SONNETT:

Q. Mr. Krug, you are the Secretary of the Interior, are you not?

A. Yes, sir.

Q. Referring to November 11, 1946, and subsequently, will you state whether you had negotiations with representatives of the United Mine Workers? If so, with whom and what those negotiations were.

A. I did have negotiations starting on November 11.

On November 11 I met at ten o'clock with the president of the United Mine Workers and his negotiating committee. I was attended by Captain Collisson, the Coal Mines Administrator, and members of his staff.

At that time the president of the United Mine Workers outlined the nature of his request for changes in the so-called Krug-Lewis contract. He also gave some background as to the bases for those requests and they were discussed for an hour or two.

478 During the course of that discussion I suggested again that the entire matter be taken up with the coal operators in the effort to reach an agreement which would promptly return the mines to private ownership under a contract based on collective bargaining.

The meeting recessed with the understanding that we would give the problem further study and the next conference was held on November 13 at 2:30 in the afternoon. At that time I outlined the happenings at a meeting which was held that morning with members of the Negotiating Committee of the coal mine operators. I suggested again that the operators were ready for a meeting where these matters could be worked out through free collective bargaining, and again suggested that in view of the rather substantial nature of the demands, we thought that was the sound way for making progress.

That meeting recessed after twenty or thirty minutes.

I had two subsequent meetings, both with Mr. Lewis privately. One late in the afternoon of November 13 and the other in the afternoon of November 14. At both of those meetings I tried to persuade from the president of the United Mine Workers—I tried to persuade him to sit down at once with the operators in an effort to work out an arrangement which would accomplish the desired purpose. The first of those

479 meetings, the president of the United Mine Workers said that he would take up the formal proposal I made with his negotiating committee, which he did, and he called me back later that night to say that the proposal had been rejected.

I met with him on the 14th and asked him again to reconsider and sit down with the operators, and outlined at that time, in writing, in a letter dated, I believe November 14, the proposal which I had in mind.

He again told me that the proposal would be taken under consideration by his negotiating committee and the last I heard from the president of the United Mine Workers is incorporated in his two letters of November 15; the first I received about 10:30, presuming to terminate the Krug-Lewis contract effective midnight on November 20; the other being a formal answer to our request that he negotiate with the operators, again rejecting it.

That is the substance of the four meetings that were held starting on November 11.

Q. Mr. Secretary, you referred to the demands advanced at the November 11 meeting as substantial demands. Will you state why they were substantial?

A. Well, unless it is relevant to the issues here I would prefer not to outline in detail the demands. We did measure them as best we could in terms of the increased cost of producing coal.

480 The best estimates our experts could make was that they would probably aggregate something like fifty cents a ton. I subsequently checked that figure with the operators' negotiating com-

mittee, and without making a detailed calculation they indicated that they would total to about fifty cents a ton.

The COURT. Is that to the ultimate consumer, sir?

The WITNESS. No, sir; that is the cost of production at the mine.

The COURT. Was there any calculation made as to the approximate additional cost to the ultimate consumer?

The WITNESS. No, sir. We made no calculation of that; but, if normal practice were followed, there would be something added to that in the cost to the ultimate consumer.

By Mr. SONNETT:

Q. Has it at all times been your position and the position of the Interior Department that the Krug-Lewis Agreement was in effect and could not be changed by unilateral action on the part of any one party to that agreement?

A. Yes, sir.

Mr. HOPKINS. Now, Your Honor——

The COURT. Just one minute.

What was that question, please, sir?

Mr. SONNETT. May the reporter read it back, Your Honor? I am not sure how I phrased it exactly.

The COURT. Yes.

The REPORTER (reading):

"Q. Has it at all times been your position and the position of the Interior Department that the Krug-Lewis Agreement was in effect and could not be changed by unilateral action on the part of any one party to the agreement?"

The COURT. The Court will have to sustain that objection.

Mr. SONNETT. May I amend the question, Your Honor, to add: Has it all times been your position and the position of the Department of the Interior, as expressed to the United Mine Workers of America, that the Krug-Lewis Agreement was at all times binding and could not be terminated by action of one party alone?

Mr. HOPKINS. Before the witness answers, Your Honor, we would like to interpose an objection.

This calls for a legal conclusion of the witness based upon the contract and its terms that are involved, if at all, in the main action, to wit, the complaint for declaratory judgment and are not relevant to the issue before Your Honor at this time. It invades the province of the Court, we add further.

The COURT. I sustain that objection as to the question as asked, but I will add this to the question: And was the fact that the Krug-Lewis Agreement was in full force and effect subject only to the limitations of Section 5 of the Smith-Connally Act until November 1, or until October 21—I will say that—1946?

The WITNESS. I wonder if I should have that entire question read?

The COURT. Yes, sir.

Repeat the question, Mr. Reporter.

I may not framed it exactly right myself.

The REPORTER. Shall I read it as originally given and then as you amended it, Your Honor?

The COURT. Yes.

The REPORTER (reading):

"Q. May I amend the question, Your Honor, to add: Has it at all times been your position and the position of the Department of the Interior, as expressed to the United Mine Workers of America, that the Krug-Lewis Agreement was at all times binding and could not be terminated by the action of one party alone?"

And then Your Honor said you would sustain his objection to the question as asked, and you would add this to the question:

483 "And was it the fact that the Krug-Lewis Agreement was in full force and effect subject only to the limitation of Section 5 of the Smith-Connally Act until November 1 or until October 21, 1946?"

The COURT. Was that fact questioned by the United Mine Workers until that time?

Mr. HOPKINS. Your Honor, with all due deference to the Court, but for the record, and before the witness answers, may we interpolate the same objection, most respectfully, that the question even as supplemented by Your Honor is not relevant to the narrow issue here on trial before Your Honor, and we respectfully renew our objections upon the reasons heretofore stated for the record.

The COURT. Objection overruled.

If we have made the question plain, and if not, I will ask it all over again, will you answer, Mr. Witness?

The WITNESS. I am sorry, Judge, I wish you would. I am not sure that I understand it.

484 The COURT. The question is whether or not the fact that the Krug-Lewis agreement was in full force and effect, subject only to limitations of Section 5 in the Smith-Connally Act, was ever questioned by the United Mine Workers.

The WITNESS. It had never been formally questioned, to the best of my knowledge, before October 21, 1946, at earlier meetings when dispute arose over the interpretation of the contract. I believe at one meeting on October 19 the President of the United Mine Workers asserted that any breach on our part would void the contract. I told him that I did not so construe it, but no reference was made to termination of the contract under Section 15 prior to the letter of October 21, 1946, to the best of my knowledge.

The COURT. Well, was the first intimation of any such suggestion prior to October 19?

The WITNESS. I believe so.

The COURT. When was it first?

The WITNESS. No; I am sorry. October 19 is the first day I recall that the assertion was made that breach on the Government's part would void the entire contract.

The COURT. Proceed.

Mr. SOMMERVELL. The Government has no further questions, Your Honor. You may inquire.

The COURT. Just one minute before you begin your cross-examination, please.

485 You say that the President of the United Mine Workers stated that breach on the Government's part would void the entire contract. Had the Government admitted a breach?

The WITNESS. No, sir.

The COURT. Then do you mean by your answer that what the President of the United Mine Workers said was that where there was an alleged breach on the part of the Government by the United Mine Workers that that terminated the contract? Is that what you mean?

The WITNESS. Yes, sir.

The COURT. Proceed.

CROSS-EXAMINATION

By Mr. HOPKINS:

Q. Mr. Krug, you advert in direct testimony to the date of November 11 as to the dates of negotiations with the United Mine Workers attended by you.

You are aware, I take it, sir, that negotiations were held between your representatives and the Mine Workers beginning November 1, 1946; are you not?

A. Yes, sir.

Q. Were you present at the meeting on November 1?

A. No, sir.

Q. On November 4?

A. No, sir.

486 Q. November 6?

A. No, sir.

Q. November 7?

A. No, sir.

Q. Where were you on October 21, the date that the original notice of the miners was addressed to you, sir?

A. Amarillo, Texas.

Q. When did you return to Washington?

A. Early on the morning of November 8, I believe. It was a Friday morning, whatever that date was.

Q. And then met the representatives of the Mine Workers for the first time three days later on November 11: Is that right?

A. When I returned on the morning of November 8 I indicated I was ready for meetings immediately. I was told one had been scheduled for the 11th, and I immediately wrote Mr. Lewis and told him I would attend that meeting, the scheduled meeting.

487 Q. I ask you, Mr. Krug, as to whether or not you, on October 27, sent the following wire to Mr. Lewis, dated October 27, 1946, addressed to Mr. Lewis in Washington:

"Replying to your letter of October 21, I am requesting that you and/or your representatives meet with Coal Mines Administrator Collisson and his associates on November 1 or any other date agreeable to you."

Did you send that wire, sir?

A. I did; yes, sir.

Q. From Phoenix, Arizona?

A. I believe so.

Q. Now, may I ask you, when you refer to "your letter"—they are the quoted words—"your letter of October 21"—you referred to the letter that you had previously received from the United Mine Workers, giving notice of the reopening of the contract?

A. Yes, sir.

Q. That is the letter of October 21?

A. Yes, sir.

Q. In replying to that letter, you sent this wire I have just interrogated you about?

A. There had been two previous responses to the letter of October 21: one by me, by wire from Amarillo, and another by letter from the Coal Mines Administrator, at my request, from Washington.

488 Q. Yes, sir; and I am now asking you about the wire from Phoenix, Arizona.

A. Yes, sir.

Q. I ask you, sir, Isn't it a fact that you received, either at Phoenix, Arizona, or at some point in the West, a wire from Mr. Lewis dated October 28, 1946, reading as follows:

"I esteem your telegram 27th received by me today, as compliance with request for official conference contained in my letter October 21. I accordingly advise that representatives United Mine Workers will meet with Coal Mines Administrator Collisson and his associates at 11 o'clock a. m. on Friday, November 1. Under these conditions Krug-Lewis Agreement remains effective and unchanged during the ensuing period of negotiations."

Did you receive that wire, sir?

A. I did; yes, sir.

Q. Subsequent to the receipt of that wire, your representatives, acting through Captain Collisson and others—that is, subsequent to the receipt of the wire of October 28 just referred to—your representatives did meet the Mine Workers in conference on November 1?

A. They did; yes, sir.

Q. Now, Mr. Krug, you have adverted to a letter written by you on November 14 addressed to Mr. Lewis, and you adverted to

489 the fact that you had received about 10:30 on the morning of November 15 a communication from Mr. Lewis, notifying you that the contract would terminate on Wednesday midnight, November 20. Is it not a fact that you also received on the same morning of November 15 another communication addressed to you, sir, signed, "Negotiating Committee, United Mine Workers of America, by John L. Lewis, President"?

A. Yes; later that same morning.

Q. Were you in your office at the time of the receipt of either of them?

A. I was not.

Q. Then, you are not prepared to say whether or not one was delivered at a different time to your office or whether they were simultaneously delivered?

A. All I can say is that immediately upon receipt, according to my information, the contents of both were phoned to me where I happened to be.

Q. The contents of both were phoned to you simultaneously?

A. No, no; one at a time; first the letter presuming to terminate the contract, and I think an hour or an hour and a half later a longer letter, answering my letter of November 14.

Q. The fact that they were communicated to you by telephone at different times is not to suggest on your part that they were not delivered simultaneously, is it?

490 A. I had a report from my office that they were not delivered simultaneously; that the shorter letter, presuming to terminate the contract, came first.

Q. Do you have in your possession the original of the letter of November 15, addressed to you, signed by the Negotiating Committee?

A. I do not; I have it in my files at the office.

Q. May I present you with a copy of such letter and ask you, Mr. Krug, to look at it and tell me whether or not it is a true copy of the letter that you received on that date?

A. Mr. HOPKINS. I would not want to vouch, on my memory, for all the words in this letter, but it looks to me like a copy of the letter I received on that date.

Mr. HOPKINS. I see. Then, the Government will offer it, Your Honor as—I mean the defendants will offer it, your Honor, as, I believe it is, Defendants' Exhibit 7.

(The letter of November 15 from the Negotiating Committee of the United Mine Workers to Mr. Krug was marked as "Defendants' Exhibit 7" and received in evidence.)

By Mr. HOPKINS:

Q. Mr. Krug, will you read that letter into the record, giving the full date, the person to whom addressed, and the signature?

Mr. SONNETT. If the Court please, I think, this being a long
491 letter, counsel can read the letter. I suggest, in the interest of orderly procedure, that he read it. He has a carbon copy of the letter, which the Secretary cannot say is exact.

The COURT. You may be right, except that in this particular case you yourself have asked witnesses to read letters.

Mr. SONNETT. I did not ask them to read carbon copies, if the Court please, which I alone authenticated. The Secretary has stated, as I understand his testimony, that he thinks this looks like the letter which he received, but he cannot state of his own knowledge that it is. There is no proof, of course, that it is in fact the letter which he received.

The COURT. If the Secretary has any doubt about it, he can state it. He says, as I understand it, that he has no real doubt about it but that he cannot vouch for every word.

By the COURT:

Q. Is that what you said, sir?

A. Yes, sir.

The COURT. The Court thinks he should read the letter.

The WITNESS. I will read it if I can, your Honor. It is not a very good copy; but I will do my best with it.

The COURT. Do you have the original?

Mr. HOPKINS. The original is in his possession

The WITNESS. I think I can read it if you will give me
492 an opportunity.

The COURT. All right.

The WITNESS. This is dated November 15, 1946.

It is addressed to Honorable J. A. Krug, Secretary of the Interior, Washington 25, D. C.

"DEAR MR. SECRETARY: Your communication of November 14, 1946, has been received and carefully considered. The United Mine Workers of America now make reply.

"On September 23, 1946, while in informal and private conference with you, we asked that the Coal Mines Administrator voluntarily

modify and adjust the miners' working hours. Your attention was again (as it had theretofore been) directed to the brutal 54-hour underground schedule of the men laboring in the bowels of the earth. This was prior to the United Mine Workers' national convention and prior to the recent national election. Since that date until receipt of your ukase of yesterday, you have remained silent and have deigned no reply to the 400,000 men who now serve the Government of the United States in the bituminous coal mines.

"The Mine Workers on October 21, 1946, exercising their contractual right, gave the requisite 10-day notice and respectfully requested a conference with you on November 1. You, while touring the West, contemptuously replied that you would be in Tule
493 Lake, California, and might find time to discuss the matter at that time and place, if the miners would journey westward to meet you there. Changing your mind, you finally designated your representatives to attend to the conference, while you continued your tour until after Tuesday, November 5. You finally appeared on Monday, November 11. Since that date, you have graciously given of your time, in full and private conference, to the extent of three hours and fifty-eight minutes.

"You were aware by the formal notice of October 21 of the operation of the ten-, fifteen-, and five-day provisions of the contract. On yesterday, November 14, 25 days after formal notice, you made your proposal.

"Your statements to the contrary notwithstanding, the Mine Workers constantly from November 1 to and including November 11 made concrete proposals to you on the matters set out in the notice of October 21. You, cavalierly, now propose a 60-day freeze of the existing conditions on terms which you have first negotiated with the operators, who are strangers to the Krug-Lewis agreement. You arbitrarily assert the right to designate that 60-day period to begin on November 16 and prescribe the method of conducting a conference between the Mine Workers and Operators during that period. You, likewise, assert that the Krug-Lewis Agreement can be 'modified by mutual consent.' Then, sir, where do you find the legal or moral right to deny to the mine workers their plain contractual
494 right to reopen the contract, as we respectfully requested on October 21?

"Your proposal for this operator-miners' conference to supersede the conference now in existence since November 1 is sheer folly, an empty platitude, well known to you so to be. On September 13 undr the auspices of Admiral Moreell, in joint conference with us, the operators in writing revealed their divided household and, as epitomized by former Senator Burke, hau'tily, arbitrarily, and with blunt notice rejected the fundamental issues as presented to them by Admiral Moreell. You now, at the last hour, of the last day, yield to the blandishments and soothing siren voice of the operators and seek to place the United Mine Workers of America and its members between Scylla and Charybdis. This course we refuse to follow.

"The Government of the United States seized the mines and entered into a contract. The mine workers do not propose to deal with parties who have no status under that contract. We do not propose to be driven like dumb beasts to the slaughter of slow strangulation en-

visioned by your proposal and the Operators' well known and long used tactics of evasion and delay. We call upon you to honor your contract.

"This, therefore, Mr. Secretary, constitutes our reply in the negative to your proposal.

"Yours truly, Negotiating Committee, United Mine Workers
495 of America; by John L. Lewis, President."

496 Mr. HOPKINS. Thank you, sir.

By Mr. HOPKINS:

Q. Mr. Krug, it is a fact, is it not, sir, that when you did first meet the representatives of the Mine Workers on November 11 that present as representatives of the Mine Workers, in addition to Mr. Lewis, was the Mine Workers Negotiating Committee composed of the several district presidents. They attended at that conference in your offices, did they not, sir?

A. Yes, sir.

Q. Is it not true, sir, that upon that occasion Mr. Lewis, as the spokesman for the United Mine Workers, outlined to you, sir, the various questions involving hours, wages, working conditions, the matter of the computation of the funds due to the Health and Welfare Fund, and other matters looking to a new contract: That is correct, sir, is it not?

A. That is generally correct, yes.

Q. Mr. Secretary, you adverted in your direct to a meeting with Mr. Lewis on October 19, which was two days prior to the notice of October 21. Is it not true, sir, that in that meeting between you and Mr. Lewis there was at that time outstanding and unresolved a dispute between the Mine Workers and the Coal Mines Administration in reference to payment of pro rata vacation?

A. With respect to interpreting the existing contract,
497 yes.

Q. There was outstanding that dispute at that time, and that was discussed between you and Mr. Lewis on that occasion?

A. Yes, sir.

Q. October 19?

A. Yes, sir.

Q. You were aware at that time, were you not, Mr. Krug, that an arbitrator's award had been made on the pro rata vacation payment dispute in Illinois sometime in the latter part of August 1946?

A. Yes, sir.

Q. And on October 19 isn't it a fact that you refused, in discussing the dispute with Mr. Lewis, to recognize that arbitrator's award?

A. That is not a fact.

Q. State the fact, then.

A. I am sorry, let me complete my answer, will you, please?

Q. If you will.

A. I told Mr. Lewis that I would be willing to agree to that construction of the contract provided I knew specifically the cases that it covered; that we could agree together its application to problems before us. Mr. Lewis refused to do that.

498 Q. Very well, sir. Then on October 21 did you authorize Captain Collisson, as Coal Mines Administrator, to accept that award as made by the Illinois arbitrator?

A. I authorized him later that same day, on October 19, to dispose of the question of grievance that seemed to be disturbing the coal miners by accepting the ruling of the arbitrator.

Q. Did you put any reservation upon the applicability of that arbitrator's award as to other cases?

A. I did not.

Q. How long was that after you had had your talk with Mr. Lewis that you gave such instructions to Captain Collisson?

A. We discussed it for two or three hours that afternoon, and at that time I gave the instructions to Captain Collisson.

Mr. HOPKINS. If the Court will indulge me just one moment.

The COURT. Certainly.

Mr. HOPKINS. That is all, Your Honor.

Mr. SONNETT. No further questions. Thank you, Mr. Secretary.

(Witness excused.)

499 Mr. SONNETT. If the Court please, the Government rests at this time with the exception of certain outstanding offers of proof which Your Honor has indicated he would rule on tomorrow. We have no further oral testimony.

The COURT. Gentlemen, there appears to be nothing further prior to the beginning of the defendants' testimony, except the matters which Mr. Sonnett has just mentioned and the proceedings of November 25, which the Court mentioned. Neither one of these matters can be taken up until tomorrow morning because of the understanding, so I see nothing to do but to adjourn at this time until tomorrow morning at 10 o'clock.

Is there any other suggestion?

Mr. HOPKINS. That is acceptable to the defendants, Your Honor.

(Thereupon, at 3:55 o'clock p. m., an adjournment was taken until the following day, Tuesday, December 3, 1946, at 10 o'clock a. m.)

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500 In the District Court of the United States for the District of Columbia

Holding a Motions Court

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

vs.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

WASHINGTON, D. C., *Tuesday, December 3, 1946.*

The above-entitled cause came on for further hearing on a rule to show cause why the defendants should not be adjudged in contempt of court, before Hon. T. ALAN GOLDSBOROUGH, Associate Justice, at 10:00 o'clock a. m.

Appearances:

On behalf of the Government: JOHN F. SONNETT, Associate Attorney General; JOHN FORD BAECHER, Special Assistant to the Attorney General; JOSEPH M. FRIEDMAN, Special Assistant to the Attorney General;

501 J. FRANCIS HAYDEN, Special Assistant to the Attorney General; ROBERT L. WERNER, Special Assistant to the Attorney General; GEORGE MORRIS FAY, United States Attorney, District of Columbia.

On behalf of the Defendants: WILLY K. HOPKINS, 900 15th Street NW.; EDMUND BURKE, Springfield, Illinois; T. C. TOWNSEND, Charleston, West Virginia; HARRISON COMBS, 900 15th Street NW.; JOSEPH A. PADWAY, 738 Bowen Building; HENRY KAISER, 736 Bowen Building; JAMES A. GLENN, 736 Bowen Building.

502 PROCEEDINGS

The COURT. Gentlemen, I presume that the first thing we will take up is the question as to whether or not the briefs which were referred to by plaintiff yesterday should be admitted in evidence, and I expect I will hear the defendants first on that.

Mr. HOPKINS. If your Honor please, in reference to the point about which the Court inquires——

The COURT. How is that?

Mr. HOPKINS. I say, in reference to the matter about which the Court now inquires, to wit, the briefs that were tentatively offered by the Government on yesterday, the Government, in response to your

Honor's request, furnished us on or about 6 o'clock on yesterday evening copies of such briefs, together with a letter indicating the portions sought to be introduced into this case.

The defendants, and each of them, your Honor, object to each of the offers of proof and the excerpts from the several briefs as indicated by the Government, without detailing them, upon the ground that such are not germane, are not pertinent, are not relevant to the issue in this case now before your Honor; that they are incompetent and immaterial, having to do with a previous case long prior to the trial of the issue—the narrow issue—now before your Honor.

503 The Court. When was that case tried—the Laughlin case.

Mr. Hopkins. The dates involved were, I think, in September of this year.

It might be added for the record, as an additional objection, that they are purely argumentative and not pertinent to the issue here on trial.

Mr. Sonnett. If the Court please, I think there is no valid objection as to competency of the evidence, if it be relevant or material, since the evidence, or offered evidence, consists of certified documents from the official files of this court and of the Circuit Court of Appeals, duly and properly certified by the respective clerks.

With respect to the question of materiality or relevance, it was our thought that the fact that counsel have subscribed to a view of the law contrary to the view they urged in this case, it would be material and relevant.

However, our offer of these papers as exhibits in this case was intended as a mechanical convenience, for the putting before the Court of facts which we think the Court has every right to take judicial notice of in any event.

That is our position with respect to the offer.

The Court. You mean the fact of the inconsistent position?

Mr. Sonnett. Yes, your Honor.

The Court. Of course, under the new rules, lawyers are
504 allowed in their pleadings to take inconsistent positions.

I remember down in the country a case before a justice of the peace where a man was sued because allegedly he had borrowed a still during Prohibition and had broken the still before he returned it. He said he had three defenses.

The first was that he had never borrowed the still. The second was that the still was broken when he borrowed it. The third was that he had returned the still in good condition.

Now, of course, those inconsistent defenses did not assist his case. The question the Court has to consider is whether or not, while an inconsistent defense may be made, the fact of its inconsistency does not throw some light—throw some light—upon the sincerity of the present position of the litigants. Now, is that your theory?

Mr. Sonnett. That is it exactly, sir.

The Court. The Court thinks that from that standpoint—from that viewpoint—the testimony should be admitted, and so rules.

Now, does the Government desire——

Mr. Padway. Before you leave that part, if the Court please, there has been some talk here of inconsistency. We do not concede any inconsistency.

The COURT. No; I understand.

Mr. PADWAY. And we do not concede that the Government in introducing this brief binds us by any contentions it makes in its brief. That is exactly what the Government is doing here. They are not only introducing our briefs, or anything we may have said in the briefs, touching on a discussion of the law, but they are also offering their own brief as a discussion.

Now, we are not admitting any inconsistency; in fact, we disavow it. On the contrary, it is argumentative. The use of briefs of this kind may be made in argument to show to the Court what position we have taken. At any other time it is factual matter.

It is the privilege of counsel to interpret the law in any one case in one way, and simply enough to interpret it another way in another case, depending on what aid it has had from other cases in the meantime.

I cannot see that this can have any other effect than argument. To offer it as testimony in the case and make it part of the record, and for this Court to consider it beyond the realms of mere argument in positions taken, and only for the purpose of argument, is, in my opinion, error. It is not only immaterial, but it is highly incompetent.

The COURT. Well, as I understood the statement made by counsel for the Government, while the briefs were not the briefs of the defendants and were briefs filed by the Government, defendants specifically adopted the briefs as their view of the law.

Mr. SONNETT. Government's Exhibit 38, if the Court please, signed by counsel in this case, expressly so states.

The COURT. Signed by counsel in this case?

Mr. SONNETT. Yes, Your Honor.

The COURT. As late as September 23?

Mr. SONNETT. It was filed on September 24, 1946, according to the certificate of the clerk.

The COURT. The Court thinks them competent, Mr. Padway.

Mr. PADWAY. I don't want to get into too enlarged a colloquy with the Court, but let's even test the soundness of that.

Are the same counsel in this case as were in the other case? Some are and some are not. Suppose different counsel is called, and they have a different view, as frequently happens—perhaps that is the purpose of calling in different counsel—it is not the same case. If it is a parallel case, and to illustrate that, a position was taken in another case different than this one, I say again that is nothing more than argument, entitled only to such weight as the Court intends to give it by way of argument. This is not the same case at all. This is a different case entirely.

The COURT. But you cannot argue it unless it is in the record.

Mr. PADWAY. Sir?

The COURT. You cannot argue it unless it is in the record.

Mr. PADWAY. Oh, I beg to differ with you. The Court may take judicial notice of these briefs. We are not disputing that there was such a case; we are not disputing that they were filed; we are not disputing that they were signed by the then counsel for United Mine Workers in the case; all that is not disputed.

The Court takes judicial notice of cases and proceedings. We often refer to briefs in cases to show what position was taken in a case, in

order to analyze a decision on particular facts. My conception of the law in this case may be entirely different than the concept counsel in the previous case had. I don't know, but that merely leads to argument and is entitled to such weight as the Court would give it, but to make it evidence and part of the record so that it may have some binding effect upon us, to the benefit of the Government and to the detriment of ourselves, seems to me to go beyond what is competent and admissible evidence.

508 The COURT. The Court does not think that essentially it makes any difference if the Court could take judicial notice; it doesn't seem to the Court it makes the slightest difference whether it is admissible or not in argument or admissible in evidence as part of the evidence, because in the last analysis it becomes only a matter of argument anyhow as to what effect it should have.

Mr. PADWAY. This is what I am contending. I am contending the Court can only consider it for that purpose.

The COURT. Of course that is the only way the Court will consider it even if it is in the record. It is the only way I could consider it.

I want to ask counsel for the Government whether you desire to again offer the remarks made by Mr. Lewis in May 1946, before the microphone?

Mr. SONNETT. The Government renews its offer.

The COURT. All right, sir; as the Court understands the defendants' position, it is this: That after the Krug-Lewis agreement was entered into the defendants had a right to say, after thirty days, that no agreement existed between it and the Government. The Court thinks that the statement made by Mr. Lewis before the microphone in May 1946, is some evidence that he couldn't have had any thirty-day period in mind at the time he made the statement, and therefore it should be admitted in evidence.

509 Mr. PADWAY. May it please the Court, I don't understand that to be the position of the defendant, and it is not a question of what is the position of the defendant. The question that Your Honor must pass upon is what did Mr. Lewis intend when he made that statement. Would the Clerk be kind enough to take that statement—will Your Honor let me have it for a moment——

Mr. SONNETT. I have a clean copy of it, Your Honor. Here is a copy for the Court, Mr. Clerk.

Mr. PADWAY. Because this is so important I would like to read it and then make a brief analysis of it.

Mr. SONNETT. If the Court please, before counsel proceeds with what he proposes to do, may I say that the rule which he has sought so often to invoke, that the words speak for themselves, is here applicable.

Mr. PADWAY. But we are now standing on an objection, and I am now assigning to the Court my reasons for objection as to the admissibility of this statement in this court.

The COURT. Will you let me look at this to see if it is the same one I looked at yesterday?

Mr. PADWAY. All right.

The COURT. I would like to look at the original, if you have it there.

The CLERK. Do you have the original?

510 Mr. SONNETT. If the Court please, we do not have the rough copy.

The COURT. This is an exact copy?

Mr. SONNETT. This is an exact copy, if the Court please.

Mr. PADWAY. Now, there is no dispute, if the Court please, on the question of Mr. Lewis having made the statement. We admit the statement was made. Our objection goes to this: The Government, I take it, intends that this statement is a binding admission on the part of Mr. Lewis respecting a construction or a feeling or an understanding he had in his own mind as to what its import is.

The COURT. That is not the Court's conception of it.

Mr. PADWAY. The Court so stated.

The COURT. The Court thinks it is some evidence.

Mr. PADWAY. Some evidence?

The COURT. Just one minute—that it is some evidence that he didn't have in his mind at the time he made that statement that the defendants have a right to declare the contract at an end at the expiration of thirty days.

Mr. PADWAY. Oh, now, may it please the Court——

The COURT. Is that your view about it?

Mr. SONNETT. Yes, Your Honor; that it is some evidence as
511 to the wilfulness of the defendants at the time of the contempt.

The COURT. I think that amounts to the same thing, sir.

Mr. SONNETT. I think it does.

Mr. PADWAY. What I wish to impress by this argument is this, Your Honor: That this statement is true and correct, even though made by Mr. Lewis as a layman. At the time he did make it, what did he say? He said that:

"A contract has just been covered by execution in the White House. It is a national bituminous agreement by and between the Government as represented by Secretary of the Interior Krug and the United Mine Workers of America. It settles for the period of Government operation all the questions at issue."

The rest, of course, becomes immaterial.

Now, Mr. Lewis did not infer nor did he say nor is there anything in this statement that can be construed as a deletion or a renunciation of the April 1945 agreement. And in April 1945 it was agreed by Section 15 on a process of termination, a process of negotiation. Mr. Lewis had in mind at that time, at least there is no evidence to the contrary by this statement, that that provision was carried into this agreement, and that is consistent with his statement. In other words, that as long as this agreement would continue to run, as long as
512 the Government had the operation of the mines, at least being only a paper operation but such operation as it claimed, all rights by this agreement which were embodied in the agreement of April 21—was that the date?

Mr. HOPKINS. April 11.

Mr. PADWAY. April 11, were carried forward and became part of this agreement and remained in force and effect during Government operation.

513 Now, my purpose in emphasizing that at this time is because counsel is seeking to leave the impression that by this statement Mr. Lewis was bound to continue with that agreement, the so-called Krug-Lewis Agreement, and only that agreement, and we must stand within the four corners of that instrument, without carrying over the instrument of 1945.

We emphatically and definitely state, and that is our contention and has been and there has been no position inconsistent with that throughout this trial taken by us that the 1945 agreement of April 11, its terms and conditions, and particularly Section 15, which prescribed a method of procedure of opening up negotiations and of terminating the agreement, were part and parcel of the agreement and were carried forward and embraced within the agreement of May 1946.

Now, counsel is privileged to argue to the contrary, but not for a moment do we concede that Mr. Lewis intended nor is there anything in here that deletes that.

Now, the basic point that I wish to make on that argument is this: that can only be determined at the time of the issues in the original case brought here. That is why the original case was brought. That may have constituted a dispute between Mr. Krug and Mr. Lewis.

514 Mr. Lewis had one interpretation, made in good faith, which he had a right to assume, and which he probably determined also upon the advice of counsel, and the Government takes another position.

But this does not enlighten us on that phase of it. This merely says that the agreement that was just entered into will run as long as the Government has the mines under its control.

We don't deny that. The agreement itself will run. It will run that, and everything that is in that agreement, and by reference and by understanding and at least by what Mr. Lewis intended when he made that agreement, and has always contended since that time, that the April 1945 agreement, and its process and procedure, is carried forward into this agreement.

The COURT. But, Mr. Padway, you lose sight of the fact that the defendant will have every opportunity to present its position as soon as this testimony is disposed of.

The Court only says that in its opinion, after the very best consideration it is able to give this, that it does throw some light on the question as to whether Mr. Lewis believed in May of 1946 that he had a right to declare his agreement with the Government at an end at the expiration of 30 days. That is all.

515 Mr. PADWAY. Well, I don't want to put a question to Your Honor, I would rather state my contention—it is our contention that that issue will be resolved at the time that the original suit will be brought on for trial.

If it is the intention of the Government to have the Court pass upon that phase at this particular time, it is wholly irrelevant from the issues of the contempt, then what we are really doing here, we are trying out the original case, which we have not prepared to do. We have not filed an answer and we have not joined issue at this time, and we have tried hard on the basis of all the objections Mr. Hopkins made to stay away from an issue that is foreign to the contempt.

But I cannot permit the record to stand without emphasizing as emphatically as I can that it is our position, and we have never receded from that position, that the 1945 agreement of April 11 is part and parcel, at least with respect to Section 15, and the termination of it, and the process of negotiation is carried into the agreement of 1946 known as the Krug-Lewis Agreement.

The COURT. The Court understands that that is your position and that is the contention you will make, and you may make it successfully when that case is tried.

Did I understand you to say you had not filed an answer yet?

516 Mr. PADWAY. Not on the main—no; our time has not expired yet, if the Court please.

The COURT. Oh, I see.

Mr. PADWAY. Yes.

The COURT. Now, gentlemen, counsel for the defendants said yesterday that it might or might not make certain admissions as to the testimony which the Court desired to offer of certain of the proceedings of November 25.

I don't know what your position is this morning, gentlemen.

Mr. SONNETT. If the Court please, I am most reluctant to interrupt, but may I, in order to supplement and clarify the exhibits marked for identification yesterday, that is, Exhibits 36, 37, and 38—that is the briefs, and so on—may I also offer as a supplementary exhibit just for the sake of the record, as Exhibit 38-A, a carbon copy of my letter of yesterday to counsel indicating the portions of the brief to which the Government refers or proposes to refer, which copy is completely marked as was the copy sent to counsel.

The exhibit offered before the Court had not been completely marked.

The COURT. Yes, sir.

Mr. SONNETT. It is for clarification, and is an exact copy of the one sent to you, Mr. Hopkins.

Mr. HOPKINS. To which the same objections are raised.

517 The COURT. The objection is overruled, gentlemen.

(Thereupon, the document referred to was marked "Government's Exhibit 38-A" for identification.)

Mr. HOPKINS. If Your Honor please, as we understood the Court on yesterday, in reference to the question of whether or not the court reporter had accurately transcribed statements made into the record on that day by Government—by defense counsel, and the remarks of the Court that may have followed thereon or prior thereto, the defendants and each of them now stipulate for the record, sir, that the statements made by the defendants, or statements made by counsel in behalf of the defendants, and the statements made by the Court in response thereto or subsequent or prior thereto, as transcribed in the record by the court reporter are accurate.

The COURT. Well, what has counsel to say as to whether or not the individual defendant John L. Lewis had any comment whatever to make upon any of the statements?

Mr. HOPKINS. The response of the defendants' counsel in answer to Your Honor's question is this, that the defendant John L. Lewis was in the courtroom on the day of November 25, at the time referred to when the statement was made by counsel in his behalf and by the Court; further, the defendant John L. Lewis did not make any statement personally except as he spoke through his counsel,

518 the present person addressing this Court.

The COURT. But in view of the statement of counsel for the defendant, the Court does not see any purpose in having the reporter take the stand and testify.

Mr. SONNETT. I would think not, if the Court please. May I suggest, however, just one minor typographical error at page 5 of the record, in the second sentence, or, rather, the first sentence of my statement reading as follows:

The COURT. What page, Mr. Sonnett?

Mr. SONNETT. Page 5, Your Honor.

The COURT. "May I inquire"?

Mr. SONNETT. "May I inquire, if the Court please, I do not know whom counsel is appearing before."

The word "before" obviously should be the word "for".

Mr. HOPKINS. No objection.

The COURT. All right, if there is no objection.

Mr. SONNETT. If the Court please——

The COURT. It seems to me that the matter is now in the record for all purposes, gentlemen.

Mr. SONNETT. I think so, Your Honor. I did, with the Court's permission, respectfully wish to call to the Court's attention that the transcript of the statement made by John L. Lewis on May 29, 1946, which the Court has ruled will be admitted into evidence, has not formally been received nor read into the record.

519 May we, in accordance with the Court's ruling, have that done now, sir?

The COURT. Yes, sir.

Mr. SONNETT. I have, if the Court please, a carbon copy which counsel has seen.

Counsel has stated, if the Court please, that he has no objection to this as to the accuracy of the transcript.

The COURT. All right.

(Whereupon, the original of the statement in question was handed to Mr. Sonnett by the Clerk.)

The COURT. Now, gentlemen, will the defendants proceed if you are ready now?

Mr. HOPKINS. Did I understand counsel for the Government to say for the record, Your Honor, that the Government rests its case?

Mr. SONNETT. The Government now rests its case.

The COURT. All right, sir.

Mr. HOPKINS. So do the defendants, individually, officially, and in their individual capacity, and the union as such.

If the Court will indulge me a moment, there is a motion that the defendants would like to make to Your Honor at this time.

The COURT. Proceed.

Mr. HOPKINS. The defendants and each of them move,
520 Your Honor, to strike all the testimony adduced by Government upon the trial of the contempt now before Your Honor and to state as the reasons, and in support of that motion, the reasons that were assigned by defendants' counsel for the record to this Court on November 29, the date that the first Government witness was offered, to wit, Captain Harvey Collisson. Without burdening the Court, I merely state that those reasons as presented to the Court ran as the Court allowed to each and all successive witnesses and the reasons are enumerated on pages 247, 248 of the record of the proceedings of November 29.

The COURT. 247 and 248, sir?

Mr. HOPKINS. Yes. And 249, I believe, is the conclusion of it and Your Honor's statement "There is no reason why that should not be done."

The COURT. Gentlemen. On the defendants' motion to declare—I forget the language—to declare null and void the rule to show cause—is that what it is?

Mr. HOPKINS. To discharge and vacate, Your Honor.

The COURT. Oh, yes. To vacate the rule to show cause, the Court ruled that that motion should be dismissed.

Now, as far as the legal effect is concerned, the Court thinks that this is the renewal of that motion and, therefore, the motion will have to be overruled.

Mr. HOPKINS. Very well.

521 Now, gentlemen, do you desire to argue the matter, prior to the Court's ruling, on the question of the guilt or innocence of the defendants as to the violation of the Court's restraining order? Do you desire to be heard?

Mr. SONNETT. If the Court please, the Government has prepared requested findings of fact and conclusions of law, which we would respectfully submit to the Court and to counsel as setting forth the Government's views as to the relevant facts and conclusions of law which might be found by the Court.

So far as argument is concerned, if the Court please, the Government desires to offer no additional argument unless the defendants desire to offer additional argument.

Mr. PADWAY. May it please the Court, I think that it would be appropriate to ask for a short adjournment, in order that we may receive a copy of these proposed findings and of having an opportunity to read them over with counsel.

The COURT. I think so, too.

Mr. PADWAY. Of such time as you will allow.

The COURT. Just make a suggestion, and if you are not through at that time, the Court will enlarge the time.

Mr. PADWAY. Will the Court give us 30 minutes?

The COURT. Certainly.

Mr. SONNETT. The Government agrees wholly with that.

The COURT. Very well.

522 (At 10:30 a. m. a recess was taken until 11 a. m. of the same day.)

523 The COURT. I understand that there are two pages, 16 and 17, which have been substituted, and I will look over those pages before I begin.

What changes were made in page 16, gentlemen?

Mr. SONNETT. The changes, if the Court please, on page 16, are in our view changes of form and not of substance, particularly with respect only to paragraph 38.

The COURT. On page 17, as I understand it, the changes that are made are made in the seventh and eighth paragraphs?

Mr. SONNETT. Yes, Your Honor. They are purely, in our opinion, formal changes.

The COURT. I understand. I will hear you gentlemen.

Mr. HOPKINS. If the Court please, are the defendants to understand now that the Government has made formal offer, submission to the Court of its proposed findings of fact and conclusions of law?

Mr. SONNETT. Yes, Your Honor.

Mr. HOPKINS. In that case then, if it please the Court, defendants have a statement and a motion to make, as follows:

We have read the findings of fact and the conclusions of law as proposed by the Government, and object to each and all of them
524 as being contrary to the evidence and to the law applicable to the issues in this case.

We now move the Court to render judgment in favor of the defendants, and each of them, and to find the defendants and each of them not guilty.

The COURT. Gentlemen, I have read the proposed findings, of course. On page 13 of Section 32, complete hearing extending over a period of how many days?

Mr. SONNETT. If the Court please, the transcript indicates that hearings have been had on November 25, 1946; November 27, 1946; November 29, 1946; December 2, 1946; and December 3, 1946.

The COURT. Five days—four days and a part of a day; is that right?

Mr. SONNETT. Yes, Your Honor.

The COURT. I will just put four days.

Mr. SONNETT. Yes, Your Honor, we respectfully submit four days.

The COURT. Gentlemen, I have gone over these carefully, and as far as I can see the findings of fact are in accordance with the evidence, and from the evidence the conclusions of law are inevitable.

Mr. PADWAY. May it please the Court, am I to understand that at this time the statement Your Honor has made is that that is an adoption of those findings of fact and conclusions of law?

525 The COURT. Yes, sir.

Mr. PADWAY. If they are, I also conclude, then, Your Honor has concluded to find the defendants guilty of contempt.

The COURT. That is true.

Mr. PADWAY. Well, I presume the next procedure is for Your Honor to determine the punishment.

The COURT. That is the next procedure; yes.

Mr. PADWAY. In view of that, in behalf of the defendant, John L. Lewis, and the other defendants, by representation through Mr. John L. Lewis, I request the opportunity that he make a statement to this Court.

The COURT. That he make a statement?

Mr. PADWAY. Yes.

The COURT. The Court will permit him to make a statement.

526 Mr. LEWIS. The history of the labor injunction prior to 1932 is a sordid one. Congress in 1914 recognized that by passing the Clayton Act, and again in 1932 by enacting the Norris-LaGuardia Act. The latter Act, in plain language which any intelligent citizen can understand, provides that——

"No court of the United States * * * shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute * * *."

The United Mine Workers are in a dispute over working conditions in the mines which, in our opinion, spells nothing else but a labor dispute. The Clayton Act and the Norris-LaGuardia Act clearly enumerate certain traditional union activities which shall not be re-

strained or enjoined by any court, among them being ceasing or refusing to perform any work or to remain in any relation of employment, and the giving of publicity to the facts involved in any labor dispute.

On October 21st this Union asked for conferences to discuss our grievances. Outstanding among these grievances which cry aloud for immediate adjustment is the deadly, brutal fifty-four-hour work week underground in American coal mines. Our miners work at the operators' option, nine hours per day, six days per week, which
527 is a longer work day and work week than prevails in the mining industry of any civilized country in the world. These disputes over working conditions in the mines were not resolved and the representatives of the United Mine Workers determined that the so-called Krug-Lewis Agreement was breached. The representatives, after a period of twenty-five days, on November 15th, notified the Secretary of the Interior that the contract was terminated as of November 20th.

The agents of the Government, in what we believe to constitute a violation of both the Clayton and the Norris-LaGuardia Acts, applied for a temporary restraining order which this Court granted without notice and without a hearing.

This Court has now ruled that the Clayton and Norris-LaGuardia Acts do not apply to this controversy. That is a matter for legal counsel to appraise and evaluate.

But above and beyond those statutes there is a Federal Constitution binding on all, even upon the Government, and that Constitution guarantees to the miners, as it does to all citizens, freedom of speech, freedom of press, freedom of assemblage, and freedom from involuntary servitude.

Your injunction, sir, I respectfully submit, deprives the miners of these constitutional rights. As citizens, the miners and I stand upon the rights guaranteed in the Constitution. This is labor's traditional position. For the purpose of acquainting the Court with the
528 historical position taken by the American Federation of Labor, permit me to read a paragraph from a report unanimously adopted by the American Federation of Labor at its 1919 convention:

"The fate of the sovereignty of American people again hangs in the balance. It is inconceivable that such an autocratic, despotic and tyrannical power can long remain in a democracy. One or the other must ultimately give way, and your committee believes that this convention should declare that, as wage earners, citizens of a free and democratic republic, we shall stand firmly and treat all injunctive decrees that invade our personal liberties as unwarranted in fact, unjustified in law and illegal as being in violation of our constitutional safeguards; and accept whatever consequences may follow."

This is still the declared and effective policy of the American Federation of Labor.

We are now confronted with the restraining order issued by this Court November 18th, 1946, which this Court holds that the United Mine Workers and I have violated. Most respectfully I must state to the Court that the considerations that prompted our original course of action with respect to this coercive and all-embracing restraining order, issued without any opportunity given the defendants to present their side of the case, have not changed. On the contrary,

529 recent events have greatly and acutely enhanced our initial conviction.

Speaking and acting in my official capacity as President of the United Mine Workers, an organization composed of some six hundred thousand coal miners, and as Vice President of the American Federation of Labor with a membership of almost eight millions of American wage earners, and profoundly mindful of their highest traditions and basic rights, I cannot, by action or by inaction acquiesce in what must be described as the ugly recrudescence of "government by injunction." I cannot disavow labor's principles or policies, nor am I disposed to adopt a course which will inevitably amount to a *d*etrayal of their constitutional rights.

The mine workers are God-fearing, law-abiding American citizens. They have not ceased work in defiance of their Government. On the contrary, they have asserted their rights as free men to protect the unjust and arbitrary acts to which they have been subjected by individuals employed by the Government.

Without intending any personal disrespect to this Court, I must respectfully but firmly stand upon those vital rights and freedoms that are rooted in our Constitution and that have been given full expression by the Congressional mandates of 1914 and 1932.

530 The COURT. Gentlemen, the verdict of the Court in the case of United States of America against the United Mine Workers of America, an unincorporated association, for violation of the restraining orders issued by this Court in that case is found guilty.

The defendant, John L. Lewis, in the said case, United States of America against the United Mine Workers of America, an unincorporated institution, and John L. Lewis individually and as president of the United Mine Workers of America, is found guilty, that is, John L. Lewis individually.

Gentlemen, the matter of sentence on these two convictions for contempt—and I should have said in the case of John L. Lewis for his contempt in violating the restraining orders issued in this case—the matter of the sentences is, of course, very important, and while it may be somewhat unusual it is certainly not improper for the Court to say he would like to have the views of counsel for the defendants and counsel for the Government as to what these sentences should be.

It may be that you are not in a position at the moment to give your views, and the Court will suggest that the Court adjourn until tomorrow morning at 10 o'clock to give the Court additional time to give the matter consideration, and to give counsel for both
531 sides additional time, or time at least, in order to be able to express their views as to what the penalties should be. If there is no objection that is what the Court will do.

Now, pending sentence, does the Government or not suggest that the individual defendant, John L. Lewis, be placed under bond and if so, how much?

Mr. SONNETT. Under all the circumstances, if the Court please, it is my recommendation, respectfully, that the defendant be permitted to remain in the custody of his counsel upon their undertaking to produce him tomorrow morning.

The COURT. That is satisfactory to the Court.

Mr. HOPKINS. That is satisfactory to counsel.

The COURT. All right.

Mr. HOPKINS. Just one second, if Your Honor will indulge us.

Mr. PADWAY. If the Court please, no sentence has as yet been imposed. If the Court would require a bond there would be nothing else to do about it, but I can assure this Court—all counsel can—that the Government did not need to add that he remain in custody of counsel. Mr. Lewis will come before this bar and before this Court anytime you direct him to be here, and if you direct him to be here tomorrow morning this Court may rest assured Mr. Lewis will be here.

The COURT. The Court has no comment to make. The Court
532 thinks that the Government's statement was proper, and the Court stands adjourned until tomorrow morning at 10 o'clock.

(Thereupon, at 11:34 o'clock p. m., the hearing was adjourned until the following day, Wednesday, December 4, 1946, at 10 o'clock a. m.)

533 In the District Court of the United States for the District of Columbia

Holding a Motions Court

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

WASHINGTON, D. C., *December 4, 1946.*

The above-entitled cause came on for further hearing on a rule to show cause why the defendants should not be adjudged in contempt of court, before Hon. T. ALAN GOLDSBOROUGH, Associate Justice, at 11:55 o'clock a. m.

Appearances:

On behalf of the Government: JOHN F. SONNETT, Assistant Attorney General; JOHN FORD BAECHER, Special Assistant to the Attorney General; JOSEPH M. FRIEDMAN, Special Assistant to the
534 Attorney General; J. FRANCIS HAYDEN, Special Assistant to the Attorney General; ROBERT L. WERNER, Special Assistant to the Attorney General; GEORGE MORRIS FAY, United States Attorney, District of Columbia.

On behalf of the Defendants: WELLY K. HOPKINS, 900 15th Street NW.; EDMUND BURKE, Springfield, Illinois; T. C. TOWNSEND, Charleston, West Virginia; HARRISON COMBS, 900 15th Street NW.; JOSEPH A. PADWAY, 738 Bowen Building; HENRY KAISER, 736 Bowen Building; JAMES A. GLENN, 736 Bowen Building.

PROCEEDINGS

The COURT. The Court will now take a recess until three o'clock.

(At 11:57 a. m., a recess was taken until three o'clock p. m., of the same day.)

AFTER RECESS

535 (The proceedings were resumed at 3:00 o'clock p. m., at the expiration of the recess.)

The COURT. Gentlemen, on yesterday at the time when the Court announced defendants guilty, the Court requested that counsel for the respective parties give the Court its views as to the sentences which should be imposed.

I would like to hear from the defendants.

Mr. HOPKINS. We would have no views to express, Your Honor, except in the light of such views as might be expressed by Government.

The COURT. What is that?

Mr. HOPKINS. We would have no views to express, I respectfully suggest to Your Honor, except in light of views that might be expressed by Government.

The COURT. Proceed, Mr. Sonnett.

Mr. SONNETT. If the Court please, the evidence before the Court in this matter, and Your Honor's findings as to the guilt of these defendants, establish that great injury had been inflicted on the people of the United States by the action of these defendants in contempt of this Court. That evidence further indicates that progressively
536 greater injury to the people of the United States will be inflicted so long as these defendants persist in their defiance of this Court.

It is recognized that under the Constitution and under all applicable statutes, cases, and rules, the punishment to be imposed upon these defendants is a matter exclusively for the Court.

Government counsel, however, in responding to Your Honor's request for recommendations, would be remiss in the discharge of their duties if they did not suggest the public interest affected by the deliberate and willful acts of the defendants.

On one hand, the one hundred and forty million people of this country, as the evidence showed and Your Honor found, depend substantially upon production of bituminous coal for their welfare, health, and safety; in fact, the very security of the Nation is directly affected.

On the other hand, the founders of this Republic, in moulding the Constitution which has made this country so great, provided that there was to be, as an independent arm of the Government, courts of law which would resolve legal questions within the scope of the federal jurisdiction. This constitutional safeguard——

The COURT. What is the constitutional safeguard? There was a noise in the room and I didn't hear it.

Mr. SONNETT. That the Constitution provided that there was
537 to be, as an independent arm of the Government, courts of laws which would resolve legal questions within the scope of the federal jurisdiction. This constitutional safeguard is basic to our democratic form of government. As Mr. Justice Marshall stated in the historic case of Marbury v. Madison: "It is, emphatically, the province and duty of the judicial department to say what the law is."

Thus, it seems to us, that in imposing sentence in this case the Court should, and we are confident the Court will, give due regard to both of these aspects of the public interest.

In arriving at a recommendation concerning sentence of the defendants the Eighth Amendment to the Constitution which, Your Honor will recall, inhibits cruel and unusual punishment and excessive fines, is, of course, pertinent.

It is respectfully recommended that, as to the defendant association, United Mine Workers of America, which I am informed has substantial cash assets, an appropriate punishment for the contempts which Your Honor has found already to have been committed by it, would be a fine of $3,500,000. Your Honor will recollect that fourteen full days have run between 2:15 p. m. on November 18, 1946, when these defendants were served with the Court's Restraining Order, and the date of their conviction. Thus, the fine, considered on a daily basis, would average $250,000 per day.

538 With respect to the individual defendant, John L. Lewis, it is recommended that this Court impose a substantial punishment, having in mind the public interests previously mentioned. It is difficult to advise Your Honor as to what, in fact, would constitute an appropriate punishment for this defendant.

In considering the recommendation which the Government should make to this Court concerning the sentence to be imposed on the defendant, Lewis, we have, of course, consulted with the Coal Mines Administration, which is in charge of the mines and is in continuous contact with the situation existing at the mines. The view of the Coal Mines Administration, in which we concur, is that, at this time, a jail sentence for the individual defendant can accomplish nothing toward restoration of coal production and might, to the contrary, place a further obstacle in the path of that objective.

The COURT. Do you mean that it might in the minds of the miners make a martyr of him? Is that what you mean, sir?

Mr. SONNETT. That is the view of the Coal Mines Administration, if the Court please.

The COURT. Is it the view of the Government in making this recommendation?

Mr. SONNETT. Yes, Your Honor.

539 The COURT. Proceed.

Mr. SONNETT. With respect to the imposition of a fine upon the individual defendant, we have some difficulty in recommending an amount because we do not know what the individual defendant's present financial condition is.

It is understood that the Constitution of the United Mine Workers of America provides that: "The salary of the President shall be $25,000 per annum;" and he "shall receive in addition to" his salary "such additional sums for additional services rendered as may be authorized and approved by" himself "together with all legitimate expenses when employed by the organization away from" his "residence."

Accordingly, it is respectfully recommended that Your Honor consider in this connection whether inquiry by the Court of the individual defendant, concerning his present financial condition, would be appropriate.

With respect to the question of any contempt by these defendants, in the future, the Court will recall that the Government's application for a preliminary injunction is before the Court——

The COURT. Well, now, let me ask you at that point.

You speak of preliminary injunction. The Court has decided in its finding of fact and conclusions of law that the defendants are guilty of irreparable injury to the entire citizenship and public,
540 irrespective of citizenship, of the United States.

Does the Government think that a permanent injunction is not appropriate at this time?

Mr. SONNETT. I am not prepared to say at this time, if the Court please, as to the Government's views.

Our thought is that the issuance of a preliminary injunction as prayed for, which application is pending before Your Honor, will fill a gap——

The COURT. Serve the same purpose, you mean?

Mr. SONNETT. Will fill the gap between now and the time of ultimate decision of this case by this Court.

The COURT. Now, is it your view that the ultimate decision of this case affects in any degree irreparable injury which present conditions impose on the people of the United States?

Mr. SONNETT. I am afraid not, sir. I hope——

The COURT. Well, it is for that reason that I asked the Government whether or not at this time a permanent injunction under the Court's finding of fact and conclusions of law is not appropriate.

Mr. SONNETT. The Government would not, most respectfully, ask for that relief at this time, if the Court please.

The COURT. Go ahead.

Mr. SONNETT. Since the defendants have not yet inter-
541 posed their answer to the complaint.

The complaint of the Government, as Your Honor will recall, asks in the usual form for such other and further relief as it may deem appropriate.

It may be that at the time of ultimate decision an injunction would be appropriate, but I am not prepared to state now whether or not the Government would make that application.

542 The COURT. Proceed, sir. Of course, the Court thinks it is perfectly clear, he would say, that, insofar as relief is concerned, preliminary injunctions have the same effect as a permanent injunction at the present time.

Mr. SONNETT. It would seem so to me, sir.

The COURT. All right.

Now, I want to ask you something else. You have suggested a fine of $350,000,000—$3,500,000, isn't it?

Mr. SONNETT. Yes, Your Honor.

The COURT. Based on the theory or based on an estimate of $250,000 a day. Now, the Court wonders, in view of the fact that this contempt may continue and may show greater or less obduracy, whether, in case the Court can take substantially the same view the Government takes as to the amount of the fine, it should not be, for purposes of illustration, $250,000 a day beginning at midnight on November 20 and continue until the further order of this Court.

Mr. SONNETT. I think, if the Court please, that the balance of my statement constitutes an answer to that; then I am finished.

The COURT. Well, maybe I made a mistake in interrupting you. Proceed.

Mr. SONNETT. With respect to the question of any contempt by these defendants, in the future, the Court will recall that the Government's application for a preliminary injunction is before the
543 Court and, it is the Government's contention, pursuant to notice already given to defendants, to move for the issuance of a preliminary injunction immediately upon the completion of the present proceedings. The Government respectfully suggests that, in the event a preliminary injunction is granted, your Honor direct the defendants to return to this court at a suitable date to be fixed by your Honor. At that time the Court, in the light of all of the facts then appearing, could consider what, if any, further action would be then appropriate.

The COURT. I will hear you, gentlemen, if you desire to be heard.

Gentlemen, we must have better order in the court. The Court cannot transact its business in this disorder.

Please suspend, Mr. Padway, until the disorder subsides.

Mr. PADWAY. May it please the Court: I have but one sentence to make with respect to the suggestions of the Government, and that is this: I shall not enter upon a discussion as to whether the fine ought to be $3,500,000 or less or more, except to say, regardless of the view the Government takes of this entire case, there is not any proof in the record to show that there has been a damage to anyone of $3,500,000, either more or less. An assumption that such money might be lost by someone, or that someone may have suffered or will suffer that
544 amount to date or in the future, or of $250,000 per day, should be based upon some competent proof in the record. There is no proof in the record to that effect.

On the basis of a civil contempt, that being remedial, the law requires, and the cases so hold, that there must be testimony in the record justifying a fine or punishment or a remedy or a repayment or reimbursement which will sustain that finding. There is no evidence to that effect in the record.

It is one thing to say that 140 millions of people or 40 millions of people or 4 millions of people will suffer some amount or some sum, and we may indulge our imaginations and assume that it is a large amount of money. But findings and the imposition of penalties cannot be imposed by imagination or upon beliefs or assumptions. There must be evidence in the record to that effect. There is none.

Now, with respect to a suggestion of that type as applicable to the criminal contempt, we say to Your Honor that that would be cruel and unusual punishment and would be in violation of the Constitution. There is no evidence to sustain that from our point of view. I do not think there is a case of record that carried with it a penalty of that nature, other than the penalty imposed some years ago by Judge Landis at Chicago, and that was, I believe, a penalty in an antitrust case of some $29,000,000. That was reversed by the
545 Court as not sustained by the record and on its face as being ludicrous.

In my opinion, there is no basis for it in the civil phase of the case, nor is there any basis for it as a criminal punishment to vindicate the dignity of this Court or to vindicate the Court's orders.

I respectfully submit that both would be in violation of the civil contempt law, because the record does not sustain it; and, on the criminal phase, because it would be in violation of the Constitution.

546 Now, we have tried to discover throughout this proceeding whether the Government assumed that the individual miners, as individuals and members of the United Mine Workers, were in contempt of court, civilly or criminally. We have never had the answer to that.

We have had a proceeding propelled in court on the theory that it may be one or the other, or both, but never had the answer with respect to the individual member of the United Mine Workers.

At one time the Court intimated, as I recall, and I think counsel agreed, that it was not a proceeding against the individual miner, or the individual miner was not in contempt since he was not directed to do anything under the order.

But a fine of $3,500,000, if the Court please, is nothing more than an imposition upon the individual miner. It is his dues, his quarters, his dollars, his nickels and dimes, and his money that would have to satisfy that sort of judgment. And for that reason I say that the imposition of that fine would be wholly inconsistent with the suggestion by the Government.

Now, the Government believes—and I don't say this facetiously or disrespectfully—by levying a fine of $3,500,000, for the period of time it alleges there has been a contempt, November 20 to date, and
547 that is the amount of money that should be imposed by way of fine and judgment, and a few more days will run and then probably the entire treasury of the United Mine Workers is taken, and its concept is that it will thereby put the United Mine Workers out of business: The Government may as well know now——

Mr. SONNETT. If Your Honor please, I object to the statement as to the Government's intention. The Government's action speaks for itself, and counsel has no right to put words in our mouth.

Mr. PADWAY. I am stating if that is the Government's intent——

The COURT. I don't think he is putting words in your mouth. He appears, as I understand, to be endeavoring to interpret your intention. Is that correct?

Mr. PADWAY. That is correct.

The COURT. Proceed.

Mr. PADWAY. And I say, if Your Honor please, that if it is the intent, or the Government believes, that the United Mine Workers will be destroyed by this fine, a fine of that magnitude or a fine that may creep along and increase in magnitude, it may as well know now that this fine will not accomplish that purpose; that the United Mine Workers will remain an organization as strong in the future, whether this fine is levied upon them or not.

548 And that is not said in defiance. That is said in justification of their belief in the justice of our position. There will always be a United Mine Workers, and it will be a strong organization, and the resentment against the Government for such a suggestion will strengthen it and make it a stronger organization than it is today.

There is a way of settling this particular controversy, but it doesn't seem to please the Government. Well, then, if the mine workers have to subject themselves to an outrageous punishment and suggestion such as this, they stand ready to submit, but with all humbleness in that submission they claim and stand firmly on the position that it is unjust, improper, outrageous, and saddled upon their heads by their own conduct which has brought this controversy before the Court.

Mr. HOPKINS. If the Court please, with the Court's indulgence, I should like briefly to supplement the statements that have just been presented to the Court by Mr. Padway upon the point to which he addressed himself, to wit, the fine which has been suggested by Government here as against the United Mine Workers, as such.

It occurred to me, Your Honor, that a spokesman of Government, in a formal proceeding such as this, alleging to act in the public interest, in reference to recommendations such as this is, in the characteristics that it carries, might well advert in his own mind and
549 in his own conscience to the fact that as a representative and a spokesman for Government they should recall that in and part of the Government, a part and parcel of it, are many, many multiplied thousands of individuals that Government seeks here to repress, restrain, and punish.

They should advert in their own mind and their own conscience, if they will but allow the light of reason to shine into the innermost recesses of them, that when they speak for Government and make recommendations for Government to Your Honor they should recall that they cannot by a sweep of the hand take away the rights of individual citizens who are themselves part of Government.

Let it be remembered, sir, now and for all time to come, that when recommendations are made by the heavy hand of Government, for the purposes apparent on their face, of punitive injury to someone that they think in their own mind does not have a legal right to take a position that they have taken here, that they are in that action undertaking to say to 600,000 coal miners, scattered in 28 States of these United States, that we, with the heavy hand of Government, with a desire to perpetuate an administrative program, and that is what it is, with a desire to punish, that they are going to undertake to lay the heavy hand upon 600,000 men who are breadwinners representing perhaps three and a half or four million common citizens of these United States.

550 We suggest, sir, that conscience and good morals alone should give Government pause to such a recommendation, inhuman as it is.

They well know, sir, that an imposition of such a penalty as this is but to fasten the hand of the Federal Government on the pay roll or the money that the man earns by the sweat of his brow 54 hours a week, 6 days a week, 9 hours a day, in the bowels of the earth, and they want to bankrupt him. Shame upon a Government. Shame upon a Government representative that would undertake to perpetrate such an outrage. I say to you, sir, that it is punitive. I say to you, sir, that there is such a thing as the Eighth Amendment to the Constitution that speaks of cruel and inhuman punishment.

Would you tear it to shreds as you recommend here in a fine upon the men that you seek to bankrupt? Let it be known that it is punitive in and of itself. Let it be known, and known to the world, that you, sir, a representative of Government, carrying out a policy or a political program of an administration come in here and recommend this excessive, this repressive, this outrageous punishment upon about four or four and a half millions of people, as represented by the United Mine Workers of America.

I say to you again, shame upon a representative of Govern-
551 ment that would reach so low as to punish a man in Pennsylvania

who is not individually in contempt of this court, under your own statement; who is not individually in contempt of this court, as I understand His Honor, in His Honor's own judgment, and yet you come here with that outrageous thing to press down upon him the crown of thorns that would take from him eventually the right to feed his family through his own earnings. Shame upon the day.

And, sir, let me say, in my judgment, paraphrasing a man who was once President of these United States, if that is the position of Government today, as outlined by you, sir, speaking for an administration political policy, then this day, sir, shall live in infamy. It shall live forever burned upon the souls and conscience, not only of these 600,000 men and their families but every man who has the spark of courage in his heart who lives under this flag.

Sir, it is outrageous enough to make a man feel that he should challenge physically the representative of Government who would make such a shameful declaration.

I denounce it with all my heart and soul. I denounce it as a day in infamy, when you come to this court and ask that a crown of thorns be placed upon a man merely to satisfy the political program of an administration.

Shame upon you. Double shame. Look into your conscience, if you can. Turn the light of justice and equity upon it and justify it, if you will.

552 That, sir, I confidently believe will be the feeling of every man affected hereby, every man who labors in these United States, and every member of his family, and every common citizen who believes that such a thing as the Constitution protects an individual as against a Government itself, and he has a right to believe it, and every individual has a right to believe that protection under the Constitution not only should be recognized by Government, but, I respectfully submit, Your Honor, that the impelling motive in that Constitution was to ask for the recognition of that right by courts as well.

We submit the cruelty, the inhumanness, the punitive motive upon the face of this proceeding condemns it within itself.

Therefore, I respectfully submit, Your Honor, that the recommendation made by the Government, from the viewpoint of the defendants, seeking to break them politically, seeking to break them financially, seeking to break them morally, is malicious, and should not be entertained by this court.

Mr. LEWIS. Mr. Hopkins, may I shake your hand? I associate myself with every word you have uttered.

Mr. HOPKINS. Sir, it is from my heart.

The COURT. Gentlemen, just a minute. Has the individual defendant anything he would like to say about his financial condition?

553 Mr. LEWIS. Sir, I don't wish to ask for mercy from your court.

The COURT. I didn't suggest that, sir. I wanted to know if you had anything you desired to say about your financial condition.

Mr. LEWIS. You ask me questions about my personal financial condition?

The COURT. If you want to make the statement. I don't ask you to make it. I say if you want to make it you have the privilege of making it, sir.

Mr. LEWIS. Sir, I have no objection to saying that I have a salary such as counsel for the Government mentioned in his statement to the Court.

When he said that I had an expense account that I decided for myself he lied to the Court. He did it deliberately because he had said he had read the Constitution, and the Constitution provides for all legitimate expenses, such as traveling, and hotel and incidentals, all audited by auditors elected by the membership in referendum vote, in secret ballot of the United Mine Workers of America.

In addition to that, sir, I have a life tenancy in a house in Alexandria, Virginia, not conveyable.

In addition, sir, I have a life tenancy in a house at my home in Springfield, Illinois, not conveyable.

554 Aside from that, I have nothing except enough money to pay my bills, but don't let that deter you from levying any amount that you wish to levy on me personally.

The COURT. Don't get in contempt of court, Mr. Lewis.

Mr. LEWIS. My dear sir——

The COURT. I extended to you the privilege of stating whether or not you desired to make any statement about your financial condition, and I advise you, sir, not to get in contempt of court.

Mr. LEWIS. Sir, I have been adjudged in contempt of court, as I understand.

The COURT. I know, but that is another contempt.

Proceed, sir, if you desire.

Mr. LEWIS. You have my statement then, sir.

The COURT. All right.

Have you anything to say, Mr. Sonnett?

555 The COURT. All right, sir.

Do you wish to say anything more?

Mr. SONNETT. Yes; I need just a few moments.

First, I think the old adage "Where there is more heat, there is less light" applies to what counsel has said.

Secondly, I am sure there must be some misunderstanding about the text of my recommendation concerning the expenses of the President of the United Mine Workers because it is quoted from the Constitution, and, as I said, and as the individual defendant said, it provides that the salary of the President shall be $25,000 per annum and he shall receive in addition to his salary such additional sums for additional services rendered as may be authorized and approved by himself, together with all the legitimate expenses when employed by the organization away from his residence.

I think the text of my statement is quite clear.

Secondly, if the Court please, I should like to invite the Court's attention to that portion of the Constitution of the United Mine Workers which provides as follows, and I read from Section 3 of Article 16, entitled "Strikes."

It reads as follows:

"Section 3: Strikes shall not be called in any unorganized field without the sanction of an international convention or the inter-

556 national executive board, and"—and this is the portion that I think is relevant—"no financial aid shall be furnished by the international union for the support of any strike until after the strike

has been in effect four weeks, unless otherwise decided by the international executive board."

The COURT. Now, gentlemen, the Court is ready to rule.

Oral conclusions of the Court

The COURT. You see, this is an unusual situation. It is not only an unusual situation but an unprecedented situation.

This is not the act of a low lawbreaker, but it is an evil, demoniac, monstrous thing that means hunger and cold and unemployment and destitution and disorganization of the social fabric; a threat to democratic government itself, and it is proper for me to say at this point that if actions of this kind can be successfully persisted in, the Government will be overthrown, and the Government that would take its place would be a dictatorship, and that the first thing the dictatorship would do would be to destroy the labor unions. That is in accordance with all history.

Now, not only is it the things that I have said, but it is this:

The Government of the United States is endeavoring,
557 through an accepted world leadership, to unite the peoples of the world in such a way as to raise the universal standards of living; to unite the peoples in good fellowship and to increase the economic power for the benefit of all people by the work that it is trying to do.

A spectacle of this kind, of course, tends to turn the Government of this country, the social fabric, of a democratic people into ridicule in the minds of the people of the world.

It seems to me that this is one of the most serious situations that has ever developed in a republic.

Now, I don't think, as I think I have said before, that anyone wants to see the unions hit a mortal blow, or any blow which will turn back the condition of labor. I think that every thinking and well-informed person understands, as I have said before, that the power of capitalism to produce is unlimited; and, aside from humanitarian considerations, aside from the fact that we are all interested in raising the standards of living of all of our people, what capitalism needs is a market, and you cannot have a market unless the people have buying power, and they cannot have buying power unless they have salaries and wages.

I cannot say whether labor has a greater friend in this country than I am or not, but I cannot conceive of it, because I have been
that friend ever since the first moment of my conscious thought
558 and opportunity to see things as they were.

Now, the Court does not see this recommendation of the Government, insofar as the union is concerned, as a desire to strike at the miners. Certainly, from the Court's standpoint, it is a desire to protect the miners' ultimate interests. Anything the Court does includes that desire.

As far as the miners themselves are concerned, it is a case of "Father, forgive them, for they know not what they do."

But unless—unless those who are undertaking to direct the affairs of this union are corrected, they will destroy the union, because if the worst should come to the worst—and it won't. I am not a

calamity—I have no desire to yell "calamity"—but if the worst comes to the worst, and it is a question of the destruction of this union to the preservation of this Republic, the Republic is going to be preserved.

Now, there is no other method of punishing an unincorporated organization except by a fine. It cannot be done by imprisonment. The Court does not think that the suggestion of the Government constitutes cruel or unusual punishment.

Certainly the action in initiating this totally unnecessary strike is costing the people, including the miners, much more than any fine that will be imposed.

559 Now, as to the individual defendant:

Of course, no humane court wants to impose punishment on anyone. On the other hand, any court that understands justice wants to impose punishments equally upon peoples of all classes.

560 As far as the individual is concerned, if he were to be punished in accordance with his offense, the Court thinks that nothing would suffice except a prison sentence, and sometimes the Court doubts if matters of expediency ought ever to govern. Sometimes the Court thinks that the spiritual values in doing exactly the right thing will, as a practical proposition in the end, result—give better results than a decision which may for the time being seem to be wise.

But I may be wrong, and this is a tremendously difficult situation and one in which the Court does not feel that it ought to disregard the advice of the Government.

The Government in this case is not merely a technical party to the suit as it would be, for instance, in a case of larceny or robbery, or a case of the United States against an individual, but in this case the United States represents all the people at a time of great national crisis, and the Court does not think it should disregard its recommendation.

The sentence of the Court insofar as to the United Mine Workers of America, an unincorporated association, will be, in accordance with the Government's recommendation, a fine of $3,500,000.

The sentence as to the individual, John L. Lewis, will be a fine of $10,000.

Mr. SONNETT. If the Court please, the Government now
561 moves for the issuance of a preliminary injunction in accordance with its notice previously served upon the defendants.

Mr. HOPKINS. Just a minute, if the Court please. This hearing, if the Court will indulge me a moment——

The COURT. Of course, sir.

Now, gentlemen, we must have order.

The DEPUTY MARSHAL. This court is in session. Please be quiet.

Mr. HOPKINS. The judgment just imposed or announced by Your Honor is upon the issue of contempt that has been upon the trial before Your Honor for several days. That being the case, sir, we respectfully submit, before any other move is attempted on the part of Government, as a matter of right, the Government should allow a motion or statement to be made to this Court, and that statement is this: that from this judgment, Your Honor, the defendants and each of them now formally and for the record give notice of appeal and we move

the Court, sir, that the judgment in this case be suspended pending perfection of the case on appeal.

That motion, we feel, is timely, it is appropriate, and properly presented to Your Honor for your ruling, sir. Your Honor, of course, bearing in mind not only the substantiality of the issues but the fact that Your Honor himself, and Government, by their own admission, from the very inception of these proceedings have stated that
562 they are unprecedented, that the questions are without parallel; the questions, therefore, both upon the law are substantial, and we submit should support the motion now made to you, sir.

Mr. SONNETT. If the Court please, if the defendants will undertake to provide security in the usual form for the payment of the fines imposed, and if the defendants will undertake to perfect their appeal by tomorrow morning, the Government would not oppose a stay until that time.

Mr. HOPKINS. If the Court please, in order to clarify what the defendants momentarily understand Government's suggestion to be, that the appeal will be perfected by tomorrow morning, the Court will, of course, bear in mind that is a physical, utter impossibility. The perfection of the appeal, the record is multiplied thousands of pages here, sir.

If they mean notice of appeal, we would, of course, undertake most expeditiously in support of our motion to file the notice of appeal most expeditiously, but if he undertakes to say "perfection of appeal," that is entirely a different matter.

Mr. SONNETT. I assumed, if the Court please, that counsel understood what I understand in the ordinary connotation of the words "perfect an appeal." I mean the filing, serving, and docketing of the case in the court above.

563 Mr. PADWAY. If the Court please, momentarily also, the defendants are not clear as to the Government's statement here that, I suppose, the Court in his own mind now has under advisement, to wit, as we understood them to say, to give the usual bond. Now, if they are requiring a bond of $3,500,000 by tomorrow morning to be given by this defendant Union, then again I say, sir, that excessive bonds certainly are not requisite; they are not at this moment required. The United Mine Workers of America cannot and would not undertake to dispossess itself of whatever financial abilities or properties it may have; upon the contrary, they would remain here, sir. But to ask the United Mine Workers, or any other organization or group of individuals, by 9 o'clock tomorrow morning, to arrange such bond, we submit is not reasonable, Your Honor. If there was any question about their fleeing the jurisdiction of this Court, or dissipating their assets, that would be another matter.

I take it that Your Honor himself would take judicial notice of the fact that the organization as such could not dispossess itself of all of its funds, even if it had such a desire, which I do not think the Government itself would impute to us.

Just a second, please.

Counsel further addresses my attention to the fact that with reference to the $10,000 bond which the Court——

564 The COURT. Ten-thousand-dollar fine.

Mr. HOPKINS. Ten-thousand-dollar fine—if we were expected to give bond of that amount, we would undertake within sometime

during the day tomorrow, to arrange that, sir. But we are not prepared and would not come into this court and allege to be prepared as against the amounts of fines which might be assessed or bonds required thereunder in the light of the proceedings of today.

Again, sir, if it were a question of the defendant fleeing the jurisdiction or the defendant undertaking to dispossess himself of any assets, that would be another matter.

The COURT. Just a minute. As far as the individual defendant is concerned, the Court feels that he should not be required to give bond this afternoon; that all we need is the assurance of counsel that he will be available tomorrow.

Mr. HOPKINS. That assurance is freely given.

The COURT. The Court feels that by tomorrow he should be able to give bond.

Mr. HOPKINS. Defense counsel freely gives that assurance, so far as the defendant himself is concerned, and would undertake to comply with it as expeditiously as possible tomorrow morning.

The COURT. The Court's difficulty, so far as the fine against the Union is concerned, is this: The Court, of course, would not
565 have imposed a fine if the Court had not been convinced it was a proper case in which to do so, if the Court had not been convinced of the legal liability which the Union has incurred.

Now, if the individual defendant in this case, gentlemen—if a prison sentence had been imposed upon him, the Court would not have allowed him bond, because the Court does not think that this is a matter to be trifled with at all. I presume the Government feels that if this fine is not going to be effective immediately, there should be a bond given. Is that your idea?

Mr. SONNETT. If the Court please, our intention was—and perhaps I did not state it clearly—to allow the defendants tomorrow to make their bond. I should like to point out that as to the defendant Union I am informed, and I believe reliably, that the cash position, in terms of cash assets of that Union, is now in the neighborhood of $13,000,000. There is no great hardship on their raising this bond.

The COURT. You mean cash bond would be satisfactory?

Mr. SONNETT. Any undertaking in usual form would be satisfactory to the Government, if the Court please.

The COURT. I am asking you specifically if the Union says now through their counsel that they will put up cash bond before 3 o'clock tomorrow of $3,500,000, is the Government satisfied?

Mr. SONNETT. Yes, your Honor.

566 Mr. PADWAY. May it please the Court: I do not understand this procedure. It is altogether foreign to my concept of judgments.

Now, insofar as the defendant Mr. Lewis is concerned, that bond will be put up tomorrow, and that will end that controversy. But insofar as the three and a half million dollars is concerned, that is—call it a judgment for the moment against the United Mine Workers. Your Honor has expressed himself—and correctly—that the United Mine Workers is an unincorporated association and cannot be put in jail.

Now—I say this most respectfully—we can do what we please with respect to putting up a bond or paying that judgment. The Government, as any other party to a suit of that nature, has a remedy:

It can enter up its judgment, can issue an execution, deliver it to the marshal, and have the marshal levy. If the United Mine Workers have sufficient cash on hand—or property—and the marshal seeks to levy upon that, there is a statute governing as to how he may do that.

If we, on the contrary, do not care to be troubled or bothered with a levy, and our judgment is recorded, so that it becomes a lien on such property as we have, it will then be up to us to put up the bond. Now, I submit that that is a matter for our determination. I will say this to your Honor——

567 The COURT. I am not undertaking to say that your view of the law should be governed by mine or anyone else's, but all I want to say, or that I have to say, is that it seems to me the law should be carried out as the Court has indicated and that this matter should not be allowed to drag. It is a serious matter, as the Court has endeavored to indicate—too serious to be trifled with—and the Court expects its judgment to be carried out.

Mr. PADWAY. Well, it is my opinion that the Court's function is now terminated, insofar as the $3,500,000 fine is concerned, except as the Government will move to collect it and will come to this Court for such aid and such writs as this Court, under the law, is authorized to make. Now, we want to determine that tomorrow. This is also serious with us. It is a big sum of money. I am not going to stand before this Court and say that we cannot put up a bond for that amount; nor will I say that we have not assets sufficient to put it up.

But suppose, if the Court please, it should be determined among counsel to go to the United States Circuit Court of Appeals tomorrow and ask for a stay even without bond; or suppose it is prepared to move before the Court on the basis of some legal question that may be raised——

568 The COURT. I have no suggestion to make to you about that or about any other courts, sir. Whatever you do is a matter for you to decide. I know my responsibility ceases with this court.

Mr. PADWAY. Just a minute, your Honor. Now, what we are going to do, so that there may be—merely to inform the Court as to what our disposition is—we are going to discuss that tonight. We shall advise our clients, the United Mine Workers and Mr. Lewis, what is the appropriate thing to do. But I see no way of the Government imposing upon us an imperative duty to do something, except with respect to the defendant Lewis, by tomorrow afternoon or the next day or the next year. There is ample authority for the Government to move, as any suitor in a case, to levy and obtain satisfaction of its judgment. Perhaps we won't put the Government to that trouble. We are not going to dispose of our assets, and in all probability—I am merely suggesting that an appropriate bond will be given; but I do not want to be put in the position that if something is going to befall us, or some subsequent penalty is going to be placed upon us because by 3 o'clock tomorrow we have not placed a bond or paid the judgment. We want to be accorded the same rights as any other suitor would be accorded with respect to a judgment now recorded in this court——

The COURT. The Court could not impose upon you any legal penalty.

Mr. PADWAY. You need not worry yourself——

569 Mr. HOPKINS. In supplement to Judge Padway, if I may—and I ask it only for the purpose of clarification—as I understand it, the Court now has before it a motion giving notice of appeal and a motion to suspend judgment pending perfection of the case.

The COURT. The Court cannot recognize, the Court cannot grant, any motion to suspend, sir.

Mr. HOPKINS. Your Honor, in that connection, I had this suggestion to make to the Court, that would perhaps be reasonable, as we see it, and it is this: The motion being before the Court, and the Court not having ruled upon it, regardless of what the Court may decide, as to whether he should sustain it or overrule it in light of the request that I think Judge Padway is undertaking to make in behalf of the miners, to which I subscribe, and that is this: as to whether or not they are able by 3 p. m. tomorrow to make such a bond, or whether or not it is the better part of wisdom for them to undertake to try to make it.

I respectfully suggest to your Honor that if your Honor would withhold the ruling on the motion to suspend judgment until 3 p. m. tomorrow, the defendants would undertake to come back at that time with a degree of clarity and definitiveness as to their ability to raise bond or the position that they occupy, and state it to the Court as of that time. We submit that that would be a reasonable request.

570 The COURT. The Court sees no reason why should the Court should suspend judgment.

What do you think?

Mr. SONNETT. If the Court please, counsel is asking for a stay of execution, which is the very question before the Court. The Government's position was that the Government would not oppose a stay of execution if, in accordance with normal and regular practice, a bond were put up. It is done every day in the week. Our thought is, Let them put up bond by tomorrow afternoon at 3 o'clock. There is no unnecessary problem here.

Mr. PADWAY. I think that will be all right. I get the position of counsel now. We can determine by tomorrow whether we will put it up or not. If we put it up, that will stay the execution. Is that correct? If we do not, then the Government can take its course. That is all right with us. We will determine that by 3 o'clock tomorrow afternoon.

The COURT. All right, gentlemen.

Mr. SONNETT. May I proceed, if the Court please, with respect to the Government's application for preliminary injunction, notice of which has previously been given to the defendants, and submit the original injunction and the notice served again yesterday, for the Court's disposition?

(Mr. Sonnett handed papers to the Court.)

The COURT. Now, gentlemen, it is the customary practice,

571 in the District of Columbia——

Mr. SONNETT. Excuse me, sir?

The COURT. The practice in the District of Columbia is that sentence shall be signed formally by the Court; A docket entry is not sufficient. If you will prepare the orders in accordance with the Court's sentences this afternoon, the Court will sign them.

Mr. SONNETT. I will so prepare them, sir.

The COURT. Is there anything further before the Court?

Mr. SONNETT. If the injunction has been granted, if the Court please, I should like to serve a copy upon counsel; and, if so, the Government has nothing further.

The COURT. You say these orders will be prepared and submitted to the Court between now and 5 o'clock?

Mr. SONNETT. They are presently being prepared, your Honor.

The COURT. All right.

(At 4:07 o'clock p. m. an adjournment of the Court was taken until Thursday, December 5, 1946, at 10 a. m.)

CLERK'S COPY.

Vol. III

TRANSCRIPT OF RECORD

(Pages 335 to 497)

Supreme Court of the United States

OCTOBER TERM, 1946

No. 759

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION

No. 760

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA

No. 781

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 782

JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 811

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI IN NOS. 759 AND 760 FILED DECEMBER 6, 1946.
PETITION FOR CERTIORARI IN NOS. 781 AND 782 FILED DECEMBER 12, 1946.
PETITION FOR CERTIORARI IN No. 811 FILED DECEMBER 21, 1946.
CERTIORARI GRANTED IN NOS. 759 AND 760 DECEMBER 9, 1946.
CERTIORARI GRANTED IN NOS. 781 AND 782 DECEMBER 16, 1946.
CERTIORARI GRANTED IN NO. 811 DECEMBER 23, 1946.

Government's Exhibit 1

EXECUTIVE ORDER NO. 9728

AUTHORIZING THE SECRETARY OF THE INTERIOR TO TAKE POSSESSION OF AND TO OPERATE CERTAIN COAL MINES

WHEREAS after investigation I find and proclaim that there are interruptions or threatened interruptions in the operation of the mines producing bituminous coal as a result of existing or threatened strikes and other labor disturbances; that the coal produced by such mines is required for the war effort and is indispensable for the continued operation of the national economy during the transition from war to peace; that the war effort will be unduly impeded or delayed by such interruptions; and that the exercise, as hereinafter specified, of the powers vested in me is necessary to insure the operation of such mines in the interest of the war effort and to preserve the national economic structure in the present emergency:

NOW, THEREFORE, by virtue of the power and authority vested in me by the Constitution and laws of the United States, including Section 9 of the Selective Training and Service Act of 1940 (54 Stat. 892) as amended by the War Labor Disputes Act (57 Stat. 163), as President of the United States and Commander in Chief of the Army and Navy of the United States, it is hereby ordered as follows:

1. The Secretary of the Interior is authorized and directed to take possession of any and all such mines, and, to the extent that he may deem necessary, of any real or personal property, franchises, rights, facilities, funds, and other assets used in connection with the operation of such mines; to operate or to arrange for the operation of such mines in such manner as he may deem necessary in the interest of the war effort; and to do all things necessary for, or incidental to, the production, sale, and distribution of the coal produced, prepared, or handled by the said mines.

2. The Secretary of the Interior shall operate the said mines in accordance with such terms and conditions of employment as are in effect at the time possession thereof is taken, subject to the provisions of Section 5 of the War Labor Disputes Act.

3. Subject to the national wage and price stabilization policies as determined by the National Wage Stabilization Board and the Economic Stabilization Director, the Secretary of the Interior is authorized, pursuant to the provisions of Section 5 of the War Labor Disputes Act, following such negotiations as he may deem necessary with the duly constituted representatives of the employees, to apply to the National Wage Stabilization Board for appropriate changes in the terms and conditions of employment for the period of the operation of the mines by the Government.

4. In carrying out this order, the Secretary of the Interior shall act through or with the aid of such public or private instrumentalities or persons as he may designate. All Federal agencies are directed to cooperate with the Secretary of the Interior to the fullest extent possible in carrying out the purpose of this order.

5. The Secretary of the Interior shall make employment available and provide protection to all employees working at such mines and to all persons seeking employment so far as they may be needed; and upon the request of the Secretary of the Interior, the Secretary of War shall take such action, if any, as he may deem necessary or desirable to provide protection to all such persons and mines.

6. The Secretary of the Interior shall permit the managements of the mines taken under the provisions of this order to continue with their managerial functions to the maximum degree possible consistent with the aims of this order.

7. The Secretary of the Interior is authorized and directed to maintain customary working conditions in the mines and customary procedure for the adjustment of workers' grievances. He shall recognize the right of the workers to continue their membership in any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, provided that such concerted activities do not interfere with the operations of the mines.

8. Possession of any mine or mines taken under this order shall be terminated by the Secretary of the Interior as soon as practicable, but in no event more than sixty days after the restoration of the productive efficiency of any such mine or mines prevailing prior to the taking of possession thereof.

HARRY S. TRUMAN.

THE WHITE HOUSE,
May 21, 1946.

Government's Exhibit 2

UNITED STATES
DEPARTMENT OF THE INTERIOR
WASHINGTON

ORDER No. 2200.
SUBJECT: Coal Mines; Possession Taken.

By virtue of the authority vested in me by the President of the United States by Executive Order dated May 21, 1946, and having determined that a strike or work stoppage has occurred or is threatened at each and all of the coal mines listed in Appendix A, attached hereto and made a part hereof, I do hereby take possession of each and all such coal mines, including any and all real and personal property, franchises, rights, facilities, funds and other assets used in connection with the operation of such mines.

The Regulations for the Operation of Coal Mines under Government Control, as amended (8 F. R. 6655, 10712, 11344, 17339), heretofore issued by the Secretary of the Interior, and such revisions thereof as may from time to time be issued, shall be applicable to the mines possession of which is taken by this Order.

The President of each of the mining companies operating the mines listed in Appendix A (or if there is no president, its chief executive officer) is hereby, and until further notice, designated Operating

Manager for the United States for each such mine. Unless advice to the contrary is received within ten days, the aforesaid President (or chief executive officer) shall be deemed to have accepted such designation. As Operating Manager for the United States, he is authorized and directed to operate any and all such mines in accordance with the afore-mentioned Regulations for the Operation of Coal Mines Under Government Control, as amended, and such revisions thereof as may, from time to time be issued, and do all things necessary and appropriate for the operation of such mines and for the production, distribution and sale of their products.

The Operating Manager for the United States shall forthwith fly the flag of the United States at each of the mining properties listed in Appendix A and shall conspicuously display at each of such properties copies of a poster to be supplied by the Department of the Interior and reading—

NOTICE

In accordance with the Executive Order of the President of the United States, Government possession this coal mine has been taken by Order of the Secretary of the Interior.

J. A. KRUG,
Secretary of the Interior.

This Order shall become effective at 12:01 a. m. May 22, 1946.

J. A. KRUG,
Secretary of the Interior.

Government's Exhibit 3

UNITED STATES

DEPARTMENT OF THE INTERIOR
WASHINGTON

ORDER No. 2200-A.

AMENDMENT TO ORDER NO. 2200—ORDER TAKING POSSESSION OF COAL MINES

By virtue of the authority vested in me by the President of the United States by Executive Order No. 9728 (11 F. R. 5593) I do hereby take possession of each and all of the coal mines of each of the companies named below including any real and personal property, franchises, rights, facilities, funds and other assets used in connection with the operation of such mines.

Accordingly Appendix A to Order No. 2200 is hereby amended by the addition of the following companies all of which are in District 9:

Jack Brown, Providence, Kentucky
William Brothers, Earlington, Kentucky
William Yarborough, Providence, Kentucky.
Crowell Bros., Providence, Kentucky
Sunset Coal Company, Clay, Kentucky

The name of the Galloway Coal Company, 306 Jefferson Avenue, Memphis, Tennessee, District 13, appearing in said Appendix A is

hereby deleted and in its place the name of Galloway Coal Mining Company, Inc., Carbon Hill, Alabama, is inserted.

This amendment to Order No. 2200 is effective 12:01 a.m. May 27, 1946.

J. A. KRUG,
Secretary of the Interior.

25 May 1946.

Government's Exhibit 4

UNITED STATES DEPARTMENT OF THE INTERIOR
WASHINGTON

ORDER No. 2200–B.

AMENDMENT TO ORDER NO. 2200—ORDER TAKING POSSESSION OF COAL MINES

SUBJECT: Coal Mines; Possession Taken.

WHEREAS by Executive Order of the President of the United States No. 9728 dated May 21, 1946 (11 F. R. 5593) I was authorized to take possession of any and all coal mines producing bituminous coal as a result of existing or threatened strikes or other labor disturbances; and

WHEREAS by my Orders No. 2200 and No. 2200–A dated May 21st and May 27th, 1946, respectively, I took possession of certain coal mines and related property; and

WHEREAS, by inadvertence and unintentional omissions, certain coal mines producing bituminous coal were not included in or covered by my said Orders No. 2200 and No. 2200–A and possession thereof by the United States has not been effected; and

WHEREAS the causes for the existing or threatened strikes or labor disturbances which prevailed at the time said Executive Order of the President was issued still prevail at said mines possession of which was not taken through said inadvertence and omission;

NOW, THEREFORE, by virtue of the authority vested in me by the President of the United States by Executive Order No. 9728 dated May 21, 1946 (11 F. R. 5593), and having determined that a strike or work stoppage is threatened at each and all of the coal mines listed in Appendix A, attached hereto and made a part hereof, I do hereby take possession of each and all such coal mines, including any and all real and personal property, franchises, rights, facilities, funds, and other assets used in connection with the operation of such mines.

The Revised Regulations for the Operation of Coal Mines under Government Control, as amended (11 F. R. 7567), heretofore issued by the Coal Mines Administrator, and such revisions thereof as may from time to time be issued, shall be applicable to the mines possession of which is taken by this Order.

The President of each of the mining companies operating the mines listed in Appendix A (or if there is no president, its chief executive officer) is hereby, and until further notice, designated Operating Manager for the United States for each such mine. Unless advice to the contrary is received within ten days, the aforesaid President (or chief executive officer) shall be deemed to have accepted such designation. As Operating Manager for the United States, he is authorized and

directed to operate any and all such mines in accordance with the afore-mentioned Regulations for the Operation of Coal Mines under Government Control, as amended, and such revisions thereof as may from time to time be issued, and to do all things necessary and appropriate for the operation of such mines and for the production, distribution, and sale of their products.

The Operating Manager for the United States shall forthwith fly the flag of the United States at each of the mining properties listed in Appendix A and shall conspicuously display at each of such properties copies of a poster to be supplied by the Department of the Interior and reading

NOTICE

In accordance with the Executive Order of the President of the United States, Government possession of this coal mine has been taken by Order of the Secretary of the Interior

J. A. KRUG,
Secretary of the Interior.

This Order shall become effective at 12:01 a. m., August 5, 1946.

J. A. KRUG,
Secretary of the Interior.

AUGUST 2, 1946.

APPENDIX A

Company	Address	District
Liller & Dropleman Coal Co., Inc	Elk Garden, W. Va	1
Pine Hill Coal Co	722 Washington St., Cumberland, Md	1
Thomas Engineering Co	C/o San O. Polino, Elkins, W. Va	1
Barnes Coal Co	Masontown, Pa	2
Boliver Fuel Co	Bolivar, Pa	2
Clickovich & Savage Coal Co	922 Hill St., Belle Vernon, Pa	2
Dohin Coal Co	Lemont Furnace, Pa	2
Ebrama Coal Co	Milton Ave., General Del., Uniontown, Pa.	2
H. H. & N. Coal Co	807 Eglow Ave., Morgantown, Pa	2
Henry Matthews	R. D. No. 1, Lemont Furnace, Pa	2
Mazzaro Coal Co	181 McCoy Road, McKee Rocks, Pa	2
Mid Atlantic Coal Co	601 Plaza Bldg., Pittsburgh, Pa	2
Monongahela Coal Co	New Eagle, Pa	2
Montour Valley Coal Co	Adam Maida, Box 141, Oakdale, Pa	2
Nard Engineering & Mining Co	947 Butler St., Etna, Pa	2
Nobel & Gray Coal Co	R. D. #4, Box 181-A, Uniontown, Pa	2
Peter Novotny	1385 Fourth Ave., New Kensington, Pa	2
Alex E. Paris Contr. Co	Studa, Rea, Pa	2
Pongrance Coal Co	Russellton, Pa	2
Jess I. Price	R. D. #12, Point Marion, Pa	2
Reiland Coal Co	Clinton, Pa	2
Mike Starvaggi Coal Co	Weirton, West Virginia	2
Sims Lumber Company	R. D. #4, Washington, Pa	2
Shady Lane Coal Co	212 Port St., Scotdale, Pa	2
The Utah Construction Co	719 Oliver Bldg., Pittsburgh, Pa	2
John Vaslosky	Box 29-E, R. D. #2, Smithfield, Pa	2
Boothsville Coals, Inc	Box 142, Fairmont, West Virginia	3
Crafton Coal Co	Philippi, West Virginia	3
Fox Coal Co. Mine #3	Box 353, Morgantown, West Va	3
Gibson Coal Co	R. F., Watson, W. Va	3
Jaynes Mine	Fairmont, West Virginia	3
Oliverio Coal Co	Station C., Box 27, Clarksburg, West Va	3
Rodriquez & Son Coal Co	209 Warley Ave., Clarksburg, West Va	3
B. H. Swaney, Inc	702 Union Bank Bldg., Clarksburg, West Va.	3
Wilson & Ingram Coal Co	St. Marys, West Virginia	3
Amesville Coal Co	Amesville, Ohio	4
Brentwood Coal & Coke Co	Albert Fleix, 2375 Valera Ave., Pittsburgh 10, Pa.	4
Hickory Coal Co	R. F. D. #1, New Philadelphia, Ohio	4
Kenwood Mining Company	Cadiz, Ohio	4

APPENDIX A—Continued

Company	Address	District
L & M Coal Company	Nelsonville, Ohio	4
Mystic Mines	New Lexington, Ohio	4
Nole & Steele Coal Co	Fairpoint, Ohio	4
Pugh & Tiller	Lancaster, Pa	4
Paul Varga & Sons	C/o Harry Iles Coal Co., 122 N. Market St., St. Clairsville, Ohio.	4
Buffalo Coal Company	Iaeger, West Virginia	7
Evans Pb. Coal Co	Panther, West Virginia	7
Garden Cap Coal Co	Hanover, West Virginia	7
Hampton Coal Co	Williamson, West Va	7
Holley Coal Company	Ottawa, West Virginia	7
Muzzle Coal Co	Hanover, West Virginia	7
Peter Grove Coal Co	507 Madison, Peytona, West Virginia	7
Raven Coals, Inc	Raven, Virginia	
Paul Smith & Kimball Mounts	Matewan, West Virginia	
Call Fuel Company	Canabrake, West Virginia	
Apex Coal Company	Mortons Gap, Kentucky	
Nally & Ballard	P. O. Box 331, Bardstown, Kentucky	
Gillespie Coal Company	Brazil, Ind	17
Somerville Coal Company	Somerville, Ind	11
Averitt Sanders Coal Co	Dora, Alabama	13
John Calvert	R. 1, Trafford, Ala	13
Franklin & Tucker	Sumiton, Alabama	13
[illegible] Golden	Dora, Alabama	13
Moss & Thornton	P. O. Box 57[illegible] Jasper, Alabama	13
Bernice Anthracite Coal Co	Russellville, Ark	14
Mullin Coal Co	McAlster, Okla	14
Biava Mine Company	Box 247, Gallup, N. Mexico	17
Caldirola Coal Company	Florence, Colorado	17
Dunn Coal Company	Box 272, Hayden, Colo	17
Rusty Coal Company	Steamboat Springs, Colo	17
Vanadium Corp. of America	Uravan, Colo	17
Pacific Supply Cooperative	Rains, Utah	20

Government's Exhibit 5

DEPARTMENT OF THE INTERIOR,
Washington, D. C.

14-112/60006 (011)

INSTRUCTIONS TO THE TELEGRAPH COMPANY

Send the following telegram to the mining company and addresses listed in the attached list:

Pursuant to the President's Executive Order, I assumed possession of the mines of your company at 12:01 a. m. May 22. Request you operate your mines and maintain full production. Letter follows.

J. A. KRUG,
Secretary of the Interior.

MESSITTE: jh.
Sent out May 21, 1946.

Government Exhibit 6

UNITED STATES DEPARTMENT OF THE INTERIOR,
Washington 25, D. C.

To the President of the Mining Company:

By virtue of the authority vested in me by the President of the United States, I have signed an order taking possession of any and all of the coal mines of your company. I have designated Vice

Admiral Ben Moreell Deputy Coal Mines Administrator and delegated to him full authority to act on my behalf. The primary object of Government possession of the mines is the maintenance of full production of coal in the interest of the continued operation of the national economy during the transition from war to peace.

As chief executive officer of your company, you have been designated Operating Manager for the United States for each and all of the company's mines. Unless you advise the Deputy Coal Mines Administrator to the contrary within ten days, you will be deemed to have accepted that designation. You are being called upon as a loyal American to serve as Operating Manager and to do everything possible to assure operation of the mines at maximum capacity.

The Regulations for the Operation of Coal Mines Under Government Control, as amended (8 F. R. 6655, 10712, 11344, 17339), which have been issued heretofore, will be applicable to the present period of Government possession, and operation of your mines should be conducted in accordance with the provisions of those Regulations.

All officials and employees of the company are to perform their usual functions and duties in connection with the mine operations. The existing managerial set-up should be used as far as practicable. You should make every effort to encourage the miners to work under the present terms and conditions of employment.

Arrange immediately to fly the flag of the United States on the mining premises. Copies of a notice of Government possession will be supplied to you as soon as possible. You should display that notice conspicuously at each of your properties.

Please fill in the form enclosed immediately, sign it, and return it promptly to the Deputy Coal Mines Administrator, Department of the Interior, Washington 25, D. C.

If you are not acting as chief executive officer of the company, this communication is to be considered as directed to the officer who is so acting.

Sincerely yours,

/s/ J. A. KRUG,
Secretary of the Interior.

MAY 22, 1946.
134181.

STATEMENT OF OPERATING MANAGER

Name of mining company or Operator: _____
Address: _____
Name of Operating Manager: _____

Notice of Government possession has been posted at each of the following individual mines listed separately (indicating Bituminous Coal Act District Numbers):

Name or Number	*Address*	*District No.*
_____	_____	_____
_____	_____	_____
_____	_____	_____

Dated: August —, 1946.

Signed: _____
Operating Manager

Government's Exhibit 7

NOTICE

In accordance with the Executive Order of the President of the United States, Government possession of this coal mine has been taken by Order of the Secretary of the Interior.

J. A. KRUG,
Secretary of the Interior.

Government's Exhibit 8

UNITED STATES
DEPARTMENT OF THE INTERIOR
WASHINGTON

ORDER No. 2199.

SUBJECT: Powers under Executive Order No. 9728: Exercise of powers as Coal Mines Administrator; delegation to Deputy Coal Mines Administrator; designation of Deputy Coal Mines Administrator.

I shall hereafter exercise, as Coal Mines Administrator, the powers, authority, and discretion conferred upon the Secretary of the Interior by the provisions of Executive Order No. 9728, dated May 21, 1946, and there is hereby delegated to the Deputy Coal Mines Administrator, subject to such supervision and direction as the Administrator shall from time to time determine, authority to exercise any and all powers, authority and discretion conferred upon the Secretary of the Interior by the provisions of the aforesaid Executive Order, with respect to all coal mines, possession of which has been taken or shall hereafter be taken by him, to the same extent and with the same effect as the said powers, authority, and discretion may be exercised directly by the Secretary of the Interior.

Vice Admiral Ben Moreell is hereby designated Deputy Coal Mines Administrator with power to perform the functions of that office.

J. A. KRUG,
Secretary of the Interior.

MAY 21, 1946.

Copies to:

Under Secretary.
Mrs. Maulding (13).
Mrs. Flower, Suggestions Comm.
Mr. McCrillis.
Mr. Campbell, Labor Relations.
Mr. Drennon, File Room (2).
Mr. Axtell, Mail Room (2).
Mr. Affre, Accounts.
Mr. Alvey, Bonneville Power (5).
Mr. Wallace, Supr. Field Rep.
Mr. Northrop (3).
Personnel Files (2).
Docket Room (15).
General Land Office (20).
Indian, Wash. (3).
Indian, Chicago (3).
Reclamation (15).
Parks, Wash. (2).
Parks, Chicago (3).
Survey (12).
Mines (5).
Grazing Service (18).
Territories (10).
Petroleum Cons. Div. (4).
Purchasing Office (15).
Solicitor (2).
P. R. R. A. (2).
Solid Fuels Adm. (6).
Fish and Wildlife Ser., Wash. (5).
Fish and Wildlife Ser., Chicago (20).
Geographical Names (2).
Div. of Information (4).
Mr. Burrier, Chicago (2).
Miscellaneous Service Div.
Land Utilization (2).
Southwestern Power Adm. (3).
War Relocation Authority (5).
Div. of Power (2).

Government's Exhibit 9

UNITED STATES DEPARTMENT OF THE INTERIOR

WASHINGTON

JUNE 5, 1946.

ORDER No. 2208.

SUBJECT: Delegation of Powers as Coal Mines Administrator to Deputy Coal Mines Administrator; Designation of Coal Mines Administrator.

All of the powers, authority, and discretion conferred upon the Secretary of the Interior by the provisions of Executive Order No. 9728, dated May 21, 1946, with respect to all coal mines, possession of which has been taken or shall hereafter be taken thereunder, to the same extent and with the same effect as the said powers, authority, and discretion may be exercised directly by the Secretary of the Interior, and any and all of the obligations and discretion of the Coal Mines Administrator under the agreement between the Secretary of the Interior, acting as Coal Mines Administrator, and the United Mine Workers of America, dated May 29, 1946, are hereby delegated to the Deputy Coal Mines Administrator and are to be exercised by him as Coal Mines Administrator, subject to such supervision and direction as the Secretary of the Interior shall from time to time determine.

Vice Admiral Ben Moreell, Deputy Coal Mines Administrator, is hereby designated Coal Mines Administrator with powers to perform the functions of that office.

This order supersedes Order No. 2199, dated May 21, 1946.

J. A. KRUG,
Secretary of the Interior.

Copies to:

Under Secretary
Mrs. Maulding (13)
Mrs. Flower, Suggestions Com.
Mr. McCrillis
Mr. Campbell, Labor Relations
Mr. Drennon, File Room (2)
Mr. Axtell, Mail Room (2)
Mr. Affre, Accounts
Mr. Alvey, Bonneville Power (5)
Mr. Wallace, Supr. Field Rep.
Mr. Northrop (3)
Personnel Files (2)
Docket Room (15)
General Land Office (20)
Indian, Wash. (3)
Indian, Chicago (3)
Reclamation (15)
Parks, Wash. (3)
Parks, Chicago (3)
Geological Survey (12)
Bureau of Mines (5)
Grazing Service (18)
Div. of Territories (10)
Petroleum Cons. Division (4)
Purchasing Office (15)
Solicitor (2)
P. R. R. A. (2)
Solid Fuels Adm. (6)
Fish and Wildlife Service, Wash. (5)
Fish and Wildlife Service, Chicago (20)
Geographical Names (2)
Div. of Information (4)
Mr. Burrier, Chicago (2)
Miscellaneous Service Division
Land Utilization (2)
Southwester Power Adm. (3)
War Relocation Authority (5)
Division of Power (2)
Surplus Property Office (10)
General Accounting Office (5)
Div. of Disbursements, Treasury Dept.
Mr. C. Girard Davidson, Room 6132

Government's Exhibit 10

UNITED STATES DEPARTMENT OF THE INTERIOR

COAL MINES ADMINISTRATION

SUBJECT: Designation of and Delegation of Powers to Deputy Coal Mines Administrator.

Capt. N. H. Collisson, USNR, is hereby designated Deputy Coal Mines Administrator. Subject to such supervision and direction as the Coal Mines Administrator shall from time to time determine, authority is hereby delegated to said Deputy Coal Mines Administrator to exercise any and all powers, authority and discretion conferred upon me by the Secretary of the Interior by the provisions of Order No. 2208 dated June 5, 1946 and Order No. 2231½ dated July 20, 1946, with respect to all coal mines, possession of which has been taken or shall hereafter be taken hereunder to the same extent and with the same effect as the said powers, authority and discretion may be exercised directly by the Secretary of the Interior or the Coal Mines Administrator.

The powers, authority and discretion hereby delegated to Capt. Collisson are in addition to his present assignment as Executive Officer to the Coal Mines Administrator.

This order shall become effective immediately: July 20, 1946.

Ben Moreell,
BEN MOREELL,
Admiral, CEC, USN,
Coal Mines Administrator.

Approved.

WARNER W. GARDNER,
Acting Secretary of the Interior.

Government's Exhibit 11

UNITED STATES DEPARTMENT OF THE INTERIOR

WASHINGTON

ORDER No. 2258

SUBJECT: Designation of Coal Mines Administrator.

Captain Norman H. Collisson, S (E), USNR, is hereby designated Coal Mines Administrator effective October 1, 1946 to succeed Admiral Ben Moreell, (CEC), USN, with all the power and authority hereto-

fore delegated to the Coal Mines Administrator by Order No. 2208, dated June 5, 1946, and Order No. 2231½, dated July 20, 1946.

J. A. Krug,
J. A. Krug,
Secretary of the Interior.

September 27, 1946.
Copies to:

Under Secretary
Assistant Secretary Davidson (2)
Assistant Secretary Gardner (2)
Miss Ramsey
Evelyn Cooper, Room 3143
Mrs. Maulding (15)
Mrs. Flower, Suggestions Com.
Mr. McCrillis
Mr. Campbell, Labor Relations
Mr. Drennon, File Room (2)
Mr. Axtell, Mail Room (2)
Mr. Rusher, Accounts
Mr. Alvey, Bonneville Power (5)
Mr. Wallace, Supr. Field Rep.
Mr. Northrop (3)
Personnel Files (2)
Docket Room (21)
Bureau of Land Management (38)
Indian Office, Wash. (3)
Indian Office, Chicago (3)
Bureau of Reclamation (20)
Parks, Wash. (3)
Parks, Chicago (3)
Geological Survey (12)
Bureau of Mines (5)
Div. of Territories (14)
Purchasing Office (15)
Solicitor (2)
P. R. R. A. (2)
Solid Fuels Adm. (6)
Fish & Wildlife Service, Wash. (3)
Fish & Wildlife Service, Chicago (20)
Geographical Names (2)
Div. of Information (4)
Mr. Burrier, Chicago (2)
Miscellaneous Service Division
Land Utilization (2)
Southwestern Power Adm. (3)
Division of Power (2)
Surplus Property Office (10).
Mr. Robert E. Day, Room 5148
Mr. Creekmore Fath, Room 5158
Mr. Skidmore, Oil and Gas Division (2)
War Agency Liquidation Unit (3)
Mr. Bloch, Secretary's Office
Telephone Room
Mrs. Seibel
General Accounting Office (5)
Div. of Disbursement, Treasury Dept.
Mrs. Wright, Room 2227
Captain of the Guard

Government's Exhibit 12

LIST OF MINES IN GOVERNMENT POSSESSION NOV. 20, 1946

Mines in Government possession pursuant to Executive Orders 9728 and 9758, subject to National Bituminous Coal Wage Agreement, revised 15 November 1946—Coal Mines Administration

CMA AREA I, DISTRICT #1

Mining company and address	Mine name and address	Index No.	Operating manager
Adams Fuel Corp., South Fork, Pa.	Riverside #2, South Fork, Pa.	435	Joseph C. Leonard.
H. S. Ale, P. O. Box 105, Curwensville, Pa.	Good A-22, Bells Landing, Pa.	186	H. S. Ale.
Allegheny River Mining Co., 132 No. McKean St., Kittanning, Pa.	Cadogan Mine, Cadogan, Pa.	76	Chas. M. Shoffner.
	Mohican Mine, Kittanning, Pa.	329	
Appalacha Coal Co., R. F. D. #4, Indiana, Pa.			
Apple Coal Co., R. F. D. #1, Fallen Timber, Pa.	#2, Fallen Timber, Pa.	18	Howard Apple.
Arcadia Co., Box 43, Indiana, Pa.	Witgus #43 (Hooverhurst Dock), Arcadia, Pa.		John P. Prushnok.

Mines in Government possession 15 November 1946—Continued

CMA AREA I, DISTRICT #1—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Argyle Coal Co., 606 1st National Bank Bldg., Johnstown, Pa.	Argyle #4, South Fork, Pa.	3312	Paul E. Henise.
	Bennington "B", Gallitzin, Pa.	38	
	Tunnell #1, Gallitzin, Pa.	512	
Atlantic Coal & Coke Co., U. S. Bank Bldg., Johnstown, Pa.	Vulcan #1, Stoyston, Pa.	413	Robert P. Reed.
"B" Quality Coal Co., 504 13th Street, Windber, Pa.	#2, #7, Windber, Pa.	58	B. F. Heckler.
	#10, Kantner, Pa.	1076	
Baker-Whiteley Coal Co., 510 Keyser Bldg., Baltimore 2, Md.	Elma #1	150	C. Lowndes Hoblitzell.
	Elma #2	151	
	Elma #3	152	
	Hooversville, Pa.		
Barnes & Tucker Co., 123 S. Broad St., Philadelphia, Pa.	Lancashire #10 & 12, Barnesboro, Pa.	266	Richard T. Todhunter.
	Lancashire #14 & 15, Bakertown, Pa.	267	
Beaver Run Coal Co., 12 South 12th Street, Philadelphia, Pa.	Cortright #1, Beaverdale, Cambria Co., Pa.	122	E. M. Cortright.
Beechnut Coal Co., 1118 Graham Ave., Windber, Pa.			J. Whalley.
Berwind-White Coal Mng. Co., 1 Broadway, New York, N. Y.	#30	3516	Charles E. Dunlap.
	#35	155	
	#36	157	
	#37	158	
	#40	160	
	#42	162	
	Maryland #1		
	Maryland #2	5575	
	Windber, Pa.		
Bethlehem Steel Corp. (part of Industrial Collieries Corp.), 701 E. Third Street, Bethlehem, Pa. (also in D-2 and D-3).	Rosedale #72	3683	M. L. Jacobs.
	Franklin #73	3684	
	Franklin #74	3685	
	Johnstown, Pa.		
Big Vein Coal Co. of Lonaconing, Maryland, Inc., 1101 Colonial Bldg., Philadelphia, Pa.	Castle	84	A. K. Althouse.
	Castle G #1	602	
	Lonaconing, Md.		
	Union #1, Zihlman, Md.	515	
	Potomac "B" (Strip), Barton, Md.		
Bigelow Run Coal Mng. Co., 108 E. Linn St., Bellefonte, Pa.	Bigelow Run #1, Phillipsburg, Pa.	3183	Arthur Barraclough.
Bird Coal Co., 1400 S. Penn. Square, Philadelphia 2, Pa.	Bird #2, Tire Hill, Pa.	49	Thomas Barnes II.
Black Beauty Coal Co., 555 Taymon Ave., Somerset, Pa.	Ruth, Somerset, Pa.	780	J. F. Neilan.
Black Lick Mng. Co., 300 High St., Ebensburg, Pa.	Commercial #5, Twin Rocks, Pa.	103	Fred J. McFadden.
Black Oak Coal Mining Co., 32 Broadway, New York, New York.	Black Oak #5, Beccaria, Clearfield Co., Pa.	54	W. T. Carpenter.
Blair Engineering & Supply Co., 1200 11th Ave., Altoona, Pa.	Midlothian, Dudley, Pa.	316	W. H. Wade.
Blue Valley Coal Co. (J. W. Urmann), 128 Main Street, Ridgway, Pa.	Blue Valley #2, Brandy Camp, Pa.	3731	J. V. Urmann.
J. B. Britten, Saxton, Pa.	Glendale #4, Six Mile Run, Pa.	180	J. B. Britten.
Broadtop Mining Co., R. F. D. #2, Hopewell, Pa.	Kelly #10, Hopewell, Pa.	5468	Thomas Bambling.
Brookwood Shaft, Inc., 900 Hannah St., Houtzdale, Pa.	Brookwood Shaft #1, Ginter, Pa.	67	W. O. Gulbranson.
Butterworth Fuel Co., Inc., P. O. Box "B," Barnesboro, Pa.	Cymbria "E," Barnesboro, Pa.	3605	Ben Butterworth.
C & G Coal Mng. Co., Weigle Street, Hoogersville, Pa.	Coleman #2, Hooversville, Pa.	1224	O. B. Coleman.
Cable Coal Co., Hollsopple, Pa.			
Cambria Fuel Co., 116 Market St., Johnstown, Pa.	Cambria #4, Stonycreek Twp., Somerset Co., Pa.		C. C. Dovey.
Cambria Mills Coal Co., Fallen Timber, Pa.	#3	3246	J. C. Apple.
	#4	581	
	Fallen Timber, Pa.		
Campbell Coal Co., Piedmont, W. Va.	Hampshire	195	George D. Campbell.
	Mill Run	2078	
	Freeport	1183	
	Barton, Md.		
Carrolltown Coal Co., St. Benedict, Pa.	Victor #9 Mine, St. Benedict, Pa.	522	Rembrandt Peale, Jr.
Castle Shannon Coal Corp., Room 4, Community Loan Bldg., Du Bois, Pa. (also in D-2 and D-6).	Westville #4, Westville, Pa.	2352	B. H. Williams.

Mines in Government possession 15 November 1946—Continued

CMA AREA I, DISTRICT #1—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Catfish Hollow Coal Co., Sixth Avenue, Clarion, Pa.	Catfish Hollow, Sarah Furnace, Pa.	5357	James Aquilina.
Central Moshannan Coal Mng. Co., 801 Don Street, Houtzdale, Pa.	Central Moshannon #3, Houtzdale, Pa.	5216	Thomas Smith.
Cherry Run Coal Mng. Co., Snow Shoe, Pa.	Cherry Run #6, Snow Shoe, Pa.	5352	H. J. Buen.
Cherrytree Coal Co., St. Benedict, Pa.	Victor #17 Mine, St. Benedict, Pa.	525	Richard Peale.
Chest Creek Coal Co., Hastings, Pa.	Miller Run #8, Hastings, Pa.	2623	Helen Radomsky.
Clarence Coal Mng. Co. (B. Friedman), Clarence, Pa.	Cherry Run #8, Clarence, Pa.		Jacob Friedman.
J. O. Clark Heirs, Partnership, Glen Campbell, Pa.	Superior #1 and 3, R. F. D. #1, Glen Campbell, Pa.	567	Aaron P. Clark.
Clyde Coal Co., Front Street, Philipsburg, Pa.			
Coal Mining Co. of Graceton, Inc., 545 N. Mahoning Street, Punxsutawney, Pa.	Graceton, Graceton, Pa.	190	A. L. Light.
Consolidated Fuel Co., Frostburg, Md.	#1, Ocean, Md.	108	William E. Jenkins.
	#3, Hoffman, Md.	109	
	#4	110	
	#10, Eckhart, Md.	111	
	#17 Lord, Md.	113	
Creekside Coal Co., Summerville, Pa.	Creekside #1, Summerville, Pa.	4062	Roy Jones.
Cumberland Coal Co. of Baltimore City, 217 E. Redwood St., Baltimore, Md.	Douglas, Douglas, Tucker Co., W. Va.	139	Edmund N. Gorman.
Dahlin Bros., Houtzdale, Pa.			
Davis Coal & Coke Co., 810 Keyser Bldg., Baltimore 2, Md.	Pendleton #23, Thomas, W. Va.	365	Dr. Huston St. Clair.
	Coketon #37, Coketon, W. Va.	100	
	Benbush #38, Benbush, W. Va.	35	
	Pierce #39	383	
	Pierce #40, Pierce, W. Va.	384	
	Kempton #42, Kempton, Md.	127	
Deringer Fuel Co., Spangler, Pa.			
Diamond "D" Coal Co., 125 N. Edgewood, Somerset, Pa.	Barrie "D," Somerset, Pa.	5046	George W. Davis.
Dorsch Coal Co., 720 E. Sample St., Ebensburg, Pa.	Dorsch #1, Ebensburg, Pa.	538	John Dorsch.
Duncan Spangler Coal Co., Bigler Avenue, Spangler, Pa.	Delta #2, Barnesboro, Pa.	133	John E. Reilly.
Dushan Coal Mng. Co., 501 Stone Street, Osceola Mills, Pa.	DuShan #1, 501 Stone St., Osceola Mills, Pa.	140	James F. Wagan.
East Windber Coal Co., 540 Central Avenue, Johnstown, Pa.	East Windber #4	141	Thomas Hindman.
	East Windber #5, 540 Central Ave., Johnstown, Pa.	142	
Eastern Gas & Fuel Associates (Koppers Coal Div.), 1050 Koppers Bldg., Pittsburgh 19, Pa. (also in D-2, D-3, D-7, and D-8).	Melcroft, Melcroft, Pa.	315	L. C. Campbell.
	Sonman "B"	476	
	Sonman "E"	477	
Ebensburg Coal Co., 123 S. Broad Street, Philadelphia 9, Pa.	Ebensburg #1, Colver, Cambria County, Pa.	143	G. Dawson Coleman.
Ednie Fuel Inc., Box 399, Philipsburg, Pa.	Broadmont #1	5325	Thomas F. Morgan.
	Broadmont #2, Huntingdon Co., Pa.	5326	
E. Eichelberger & Co., Everett Bank Bldg., Everett, Pa.	Bacon #4, Six Mile Run, Pa.	22	Coolidge A. Eichelberger.
Eleanora Coal Co., 105 Pine Street, Punxsutawney, Pa.			
Elk Garden Big Vein Coal Corp., P. O. Box 809, Cumberland, Md.	Elk Garden Big Vein, Shaw, W. Va.	2731	William L. Sherman.
Elliott Coal Mng. Co., 8 N. Front Street, Philipsburg, Pa.	Curtin 1 & 2	5341	
	Penn 8-12		
	Hassinger		
	Knowles #1	1626	
	Colorado #3	107	
	Vaughn		
	Casper #9	5365	
	Penn 6	5364	
	Penn #14	5260	
	Penn 8	5258	
	Penn 9, Philipsburg, Pa.	667	

Mines in Government possession 15 November 1946—Continued

CMA AREA I, DISTRICT 1—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Enterprise Coal Mng. Co., Garrett, Pa.	Ponfeigh #6		W. E. Gnagey.
	Ponfeigh Smokeless #1		Chas. E. Merrill, Jr.
	Ponfeigh		Do.
	Ponfeigh #1 & #1A	387	Do.
	Ponfeigh #7 & 7B		Do.
Evans Coal Co., Box 589, Clarion, Pa.			
Fall Brook Coal Co., Bridge Street, Antrim, Pa.			
Glen Fisher Coal Co. (America & James Betta), Weedville, Pa.	Glen Fisher, Weedville, Pa.	1432	America Betta.
Foreman-White Coal Co., Saxton, Pa.			
Forks Coal Mng. Co., Box 7, Cresson, Pa.	Hughes #11, Blandburg, Pa.	219	W. H. Hughes.
	Iron Springs, Cresson, Pa.		
Franklin Hills Mng. Co., P. O. Box 779, 36 Harvard Street, Cumberland, Md.	Franklin Hills Mining Co., near Westernport, Md.	5592	A. H. Wilson.
Gahagen Coal Co., Box 137, Rockingham, Pa.	Huskin #3	220	H. W. Gahagen.
	Huskin #6	222	
	Huskin #4, Gahagen, Pa.	221	
Garfield Fuel Co., Box 31, Bolivar, Pa.	Garfield #3, Bolivar, Pa.	3343	W. W. MaQuilken.
Garman Coal Co., Barnesboro, Pa.			
Garrett Coal Corp., Kitzmiller, Md.	Earl #2, Vindex, Md.	3315	W. Robert Nethken.
Georges Creek Big Vein Coal Co., Box 197, Frostburg, Md.	McDonald, Barton, Md.	298	James Jenkins.
Georges Creek Coal Co., Inc., Liberty Trust Bldg., Cumberland, Md. (also in D-8).	G. C. #2	175	R. L. Stallings.
	G. C. #3, Lonaconing, Md.	176	
Glen Coal Co. (R. E. Askey), Laurel St., Philipsburg, Pa.	Glen #2, Philipsburg, Pa.	2315	R. E. Askey.
Goodtown Smokeless Coal Mining Co., 217 Broadway, Berlin, Pa.	Pine Hill #2	385	Wm. O'Dwyer.
	Pine Hill #3	3944	
	Pine Hill #4, Goodtown, Pa.	5398	
	Bittner #1	1627	
	Bittner #2, Pine Hill, Pa.		
W. O. Gulbranson, Inc., McAteer Street, Houtzdale, Pa.	Imperial #2	224	W. O. Gulbranson.
	Imperial #3, Houtzdale, Pa.	225	
Hamler Coal Mng. Co., P. O. Box 229, Somerset, Pa.	Hamler, Sligo, Clarion Co., Pa.	194	George A. Dickey.
F. R. & H. L. Harrington, Center Street, Adams, Mass.	F. R. & H. L. Harrington, Clearfield County, Karthaus & Covington Twp., Frenchville, Pa.	198	H. L. Harrington.
Hastings Fuel Co., 12 S. 12th Street, Philadelphia 7, Pa.	Hastings #1	202	E. M. Cortright.
	Hastings #2, Hastings, Cambria Co., Pa.	877	
Hawk Run Coal Mng. Co., Hawk Run, Pa.	Coaldale #26, Hawk Run, Pa.	98	Jos. S. Rusnak.
Haws Refractories Co., 407 Main Street, Johnstown, Pa.	Shaft Mine #7, Johnstown, Pa.	236	E. E. Slick, Jr.
Heisley Coal Co., 1617 Penn Blvd., Philadelphia, Pa.	Heisley, Nanty Glo, Pa.	205	L. G. Ball.
Heshbon Coal Co., Johnstown Bank & Trust Bldg., Johnstown, Pa.	Heshbon #2, Heshbon, Pa.	210	H. J. Meekan.
Hickory Hill Coal Co., R. D. Saxton, Pa.			
Hillman Coal & Coke Co., 1914 Grant Bldg., Pittsburgh, Pa. (also in D-2).	Jerome #1	233	J. N. Hillman, Jr.
	Jerome #2	234	
	Jerome #3, Jerome, Somerset Co., Pa.	235	
Hillside Coal Co., 115 11th Street Philipsburg, Pa.	Hillside #1, S. Philipsburg, Pa.	237	James F. Eyerly.
	Hillside #2	336	
	Hillside #3	3714	
	Hillside #4	3868	
	Hillside #6, Osceola Mills, Pa.	2186	
R. M. Himes, Box 61, Brockway, Pa.	Himes Mine, Washington Twp., Jefferson Co., Pa.	1511	R. M. Himes.
A. P. Hoffa Coal Co., Barton, Md.	Hoffa #4, Barton, Md.	215	Arthur P. Hoffa.
C. A. Hughes & Co. (R. H. Moore & Thomas, A. Swope) P. O. Box 28, Cresson, Pa.	Hughes #2, Portage, Pa.	217	R. H. Moore.
	Lilly #3, Lilly, Pa.	280	

Mines in Government possession 15 November 1946—Continued

CMA AREA I, DISTRICT #1—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Imperial Coal Corp., 703 Johnstown Bank & Trust Bldg., Johnstown, Pa.	Cambria Smokeless, Coalport, Pa.	81	Charles A. Owen.
	Diamond Smokeless, Boltz Pa.	134	
	Imperial Cardiff, Nettleton, Pa.	223	
James Coal Mng. Co., Crossett Bldg., North McKean Street, Kittanning, Pa.	Glenside #6, Straford, Indiana Co., Pa.	182	L. A. Schry.
	Orpha, Cadogan, Armstrong Co., Pa.	353	
Johnstown Coal & Coke Co., 1006 United Nat'l Bank Bldg., Johnstown, Pa.	Portage #2	393	Andrew B. Crichton.
	Portage #4	392	
	Portage #8	394	
	Portage #10	396	
	Portage, Pa.	285	
	Logan #4	287	
	Logan #6 Beaverdale, Pa.		
	Manor #3, Vindex, Md	895	
Jordan Coal Co., Moshannan Bldg., Philipsburg, Pa.			
Juliette Coal Co., 1020 Grant Bldg., Pittsburgh 19, Pa.			
K. & R. Coal Co., Kylertown, Pa.	Ogle #9, Kylertown, Pa.	584	Arthur Rydberg.
William Kardysauskas, 214 South Avenue, Du Bois, Pa.	Wm. Kardysauskas Mine, Westville, Pa.	1588	Wm. A. Kardysauskas.
Keystone Mng. Co., 100 Cedar Street, New York 6, N. Y.	Sarah Furnace, Sarah Furnace, Clarion County, East Brady, Pa.	451	William W. Inglis.
King Coal Co., New Bethlehem, Pa.	Mauk Mine #1, Sprankle Mills, Pa.	313	Harry E. King.
Knowles Coal Co., Box 43, Philipsburg, Pa.	Knowles #3, Philipsburg, Pa.	5194	Jonah Knowles.
Koontz Coal Co., P. O. Box 197, Frostburg, Md.	Swanton, Barton, Md	500	James Jenkins.
Michael Koshko, Clarence, Pa.	Lehigh #25, Clarence, Pa.	3647	Michael Koshko.
Kristianson & Johnson Coal Co., Inc., Lanse, Pa.	Alder Run #5		Frans Kristianson.
	Flat Run #1 & #2, Allport, Pa	259	
Kuhstos & Bambling, R. D. #2, Hopewell, Pa.	Krist #2 & #3, Morrisdale, Pa	1646	Otto Kuhstos.
	Cambria #1, Hopewell, Pa.	532	Sixtus Gampdon.
L. C. S. Colliery, Inc., 207 Porch Bldg., Franklin Street, Johnstown, Pa.	Virginia #14, Heshbon, Pa.	263	B. A. Lantzy.
Lanark Coal Co., Hastings, Pa.	Lanark #1, Hastings, Pa.		Jos. Saricks.
Lee Hollow Coal Co., 32 N. 2nd Street, Clearfield, Pa.	G & S #3, La Jose, Pa.	274	W. T. Carpenter.
Leland Coal Co., 32 Broadway, New York, N. Y.	Clover Run, Mahoffery, Pa.	289	A. R. Burkett.
Lick Run Coal Co., Box 45, Lloydell, Pa	Leland #10, Beccaria, Clearfield Co., Pa.	5277	
	Lick Run #2	167	A. L. Light.
	Lick Run #3 Lloydell, Pa.		
A. L. Light (Special), 545 W. Mahoning St., Punxsutawney, Pa.	Frances Mine, Rossiter, Pa.		
Liller & Dropleman Coal Co., Inc., Elk Garden, W. Va., (2200-B).			
Lindsey Coal Mng. Co., Punxsutawney, Pa.	Lindsay #4 Mine, Mundorf, Pa.	282	A. L. Light.
Loyal Hanna Coal & Coke Co., 1436 Commercial Trust Bldg., Philadelphia, Pa.	Loyal Hanna #5, Cairnbrook, Pa.	280	C. M. Watt.
Mack Coal Co., 125 S. Main St., Homer City, Pa.	Mack #5, Homer City, Pa.	3939	Lisle S. Flickinger.
Manon Coal Corp. (D. B. Holsopple), Holsopple, Pa.	Spangle #3 Mine, Bamshoro, Pa.	320	D. B. Holsopple.
Maryland Trojan Coal Co., 718 Real Estate Trust Bldg., Philadelphia, Pa.	Cush Creek, Glen Campbell, Pa.	511	F. A. Taylor.
Mistetler Coal Co., Box 230, Keyser, W. Va.	Hampshire #9	196	Earl K. Hess.
	New Creek Hampshire, W. Va.	542	
McCombie Coal Mng. Co., Spangler, Pa.	McCombie #10, Bakertown, Pa.	5389	Frank McCombie.
	Savy Smokeless, Carrollton Road, Pa. (Bakertown).	3273	
	McCombie #2, Spangler, Pa.	236	
McCormick Coal Co., Barnesboro, Pa.	McCormick #2, Barnesboro, Pa. (Cymbria Siding).	126	Robert J. McCormick.

Mines in Government possession 15 November 1946—Continued

CMA AREA I, DISTRICT #1—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
McGraw and Bindley, 1723 Oliver Bldg., Pittsburgh 22, Pa.	Oak Ridge #4, Spangler, Pa.	3896	Hurban A. McGraw.
James M. McIntyre & Co., 929 Commercial Trust Bldg., Philadelphia 2, Pa.			
McNitt Coal Co., Box 197, Frostburg, Md.	McNitt #2	305	James Jenkins.
	McNitt #3	3821	
	Midlothian, Md.		
	Hamill, Kitzmiller, Md.	193	
Middle Pennsylvania Coal Corp. (Chas. W. Davis, Receiver), Madera, Pa.	Mid Pen #4	317	H. B. Swoope, Jr.
	Clemmos #1	82	
	Belsena #1	3671	
	Bucher	3733	
	Madera, Pa.		
George E. Miller Coal Co., 214 W. Market Street, Lewistown, Pa.			
Mineral Point Coal Co., 606 First Natl. Bank Bldg., Johnstown, Pa.	Smokeless #4, Mineral Point, Pa.	473	Paul E. Henise.
Mohawk Mining Co., Colwell-Arnold Bldg., Kittanning, Pa.			
Monroe Coal Mng. Co., 1617 Penn. Blvd., Philadelphia, Pa.	Revloc, Revloc, Pa.	429	L. G. Ball.
Morehouse Brothers, 198 E. Main Street, Frostburg, Md.	MB #1, Lonaconing, Md.		D. W. Moorhouse.
Morrisdale Coal Mng. Co, 1512 Real Estate Trust Bldg., Philadelphia, 7 Pa.	Cunard Slope	125	R. W. Wigton.
	Maxton Slope	722	
	Morrisdale #4	212	
	Morrisdale, Pa.		
H. J. Morrison, 199 Main Street, Brockway, Pa.	H. J. Morrison Mine, Westville, Pa.	1803	H. J. Morrison.
Morris Run Coal Mng. Co., 1118 Miners Natl. Bank, Wilkes-Barre, Pa.	Bloss	335	John C. Haddock.
	Seymour	455	
	Teasdale #1	3518	
	Morris Run, Tioga Co., Pa.		
Moshannon Smithing Coal Co., 4th & Reed St., Clearfield, Pa.	Glenfmar #1, Ramey, Pa.	179	Walter S. Williams.
Mountain Fuel Co., 116 N. Main St., Greensburg, Pa.	Idabelle #1	1199	Fred M. McIntyre.
	Idabelle #2	3066	
	Homer City, Pa.		
S. J. Mountz, Smithmill, Pa.	S. J. Mountz Co., Smithville, Pa.	531	Viola M. Rickenbaugh.
Joseph E. Mulson, Hillcrest, Philipsburg, Pa.	Mulson Coal Mine, Philipsburg, Pa.	1817	Joseph Mulson.
Harvey Naughton, P. O. Box 516, Windber, Pa.			
New Bethlehem Coal Co., New Bethlehem, Pa.	Bostonia #10	3054	Hugh W. Iseman.
	Bostonia #11		
	New Bethlehem, Pa.		
New Shawmut Mng. Co., St. Marys, Pa.	Brandy Camp, Brandy Camp, Pa.	357	W. J. Stetteler, Jr.
	No. 42, Byrnedale, Pa.	467	
	Proctor, Tyler, Clearfield Co., Pa.	401	
New York Central R. R. Co., Coal Mining Department, Indiana, Pa.	Clymer #1	96	T. F. McCarthy.
	Clymer #2	99	
	Clymer, Pa.		
	Barr, Dixonville, Pa.	945	
	Commodore, Commodore, Pa.	104	
	Arcadia #1	380	
	Arcadia #2	3533	
	Arcadia, Pa.		
	Rossiter Deep & Strip, Rossiter, Pa.	443	
	Cooper, Gramflat, Pa.	120	
	Dutch Run, Alverda, Pa.	382	
	Barr #2 "B"	3284	
	Barr #2 "D"	3288	
	Clymer, Pa.		
North Branch Smokeless Coal Co., 838 Munsey Bldg., Washington, 4, D. C.	North Branch, P. O. Box 261, Piedmont, W. Va.	541	Floyd M. Smith.

Mines in Government possession 15 November 1946—Continued

CMA AREA I, DISTRICT #1—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Northwestern Mng. & Exchange Co., P. O. Box 391, Scranton, Pa.	Kramer, Henderson Twp., Jefferson Co., B-178, Du Bois, Pa.	257	H. J. Connolly.
	Kyler, Fox Twp., Elk Co., Du Bois, Pa.	261	
	Oyster, Harton Twp., Elk Co., Du Bois, Pa.	355	
Nugent Mng. Co., Box 119, Du Bois, Pa.	Nugent #3, Beech Tree, Pa.	5278	M. H. Hartzfeld.
	Rattlesnake, Lanes Mills, Pa.	1657	
Paint Creek Collieries, P. O. Drawer #270, Johnstown, Pa. (taken over by Toth Bros.).	#2, Carpenter Park, Pa.	80	J. M. Dorey.
Painter & Dell (G. Wesley Dell), Three Springs, Pa.	Roll & Rock Mine, Three Springs, Pa.	831	W. M. Painter.
Patton Clay Manufacturing Co., Drawer M, Patton, Pa.	Patton Clay #1, Patton, Pa.	831	J. Fred Blankenhorn.
Peale, Peacock & Kerr, Inc., St. Benedict, Pa.	Victor #18	526	Rembrandt Peale, Jr.
	Victor #19	590	
	St. Benedict, Pa.		
Peerless Coal Co., P. O. Box 337, Narbeth, Pa.	Peerless #2, Windber, Pa.	3606	Harper J. Quinn.
Penn Smokeless Fuel Co., Box 2034, Jerome, Pa.	Hiyasota #1	213	Don R. Simpson.
	Hiyasota #2	1077	
	Jerome, Pa.		
Wm. Penn Coal Co., Bolivar, Pa.	Ellen #1, Bolivar, Pa.	5024	Albert V. Elsman.
Pennsylvania Coal & Coke Corp., 70 E. 45th St., New York, N. Y.	Pennsylvania #3	371	H. Lionel Kringel.
	Pennsylvania #8	373	
	Ehrenfeld, Pa.		
	Pennsylvania #9B, Cresson, Pa.	374	
	Pennsylvania #10, Gallitzin, Pa.	376	
	Pennsylvania #22, Garman, Pa.	379	
	Pennsylvania #46, Winburne, Pa.	381	
Pennsylvania Electric Co., 222 Levergood Street, Johnstown, Pa.	Seward Mine #5, Johnstown, Pa.	.....	W. C. Sontum.
W. A. Perry, Box 668, Clearfield, Pa.	.....	.....	W. A. Perry.
Pine Hill Coal Co., 722 Washington St., Cumberland, Md. (2200-B).	.....	.....	
Pine Hill Smokeless Coal Co., Inc., Garrett, Pa.	.....	.....	
W. H. Piper & Co., Inc., 814 Main St., Lilly, Pa.	Sonman #2, Lilly, Pa.	474	Leslie S. Piper.
Pittsburgh Consolidation Coal Co., Pittsburg Coal Co., 2000 Koppers Bldg., Pittsburgh 19, Pa. (also in D-2 and D-3).	#119, Jenner, Pa.	114	G. A. Shoemaker.
	#120, Acosta, Pa.	115	
	#123, Gray, Pa.	117	
Ponleigh Smokeless Coal Co., Garrett, Pa.	.....	.....	
Portage-Kittanning Coal Co., 805 Main Street, Portage, Pa.	.....	.....	
Powell Coal Co., 407 Market St., Kittanning, Pa.	Powell Coal Co., R. D. #2, Kittanning, Pa.	5089	H. K. Powell.
C. E. Powell Coal Co., Blandburg, Pa.	#1 Glasgow, Pa.	.....	C. E. Powell.
	#4 Blandburg, Pa.	5551	
Press Coal Co., R. F. D., Barnesboro, Pa.	Thermal #7, Barnesboro, Pa.	.....	Steve Pyrz.
Pritts Bros. Coal Co., Kitzmiller, Md.	Pritts Bros. Coal Co., Kitzmiller, Md.	1912	M. E. Pritts.
Quality Coal Co., Myersdale, Pa.	Quality Pine Hill, Goodtown, Pa.	405	J. G. Brown.
Red Lands Coal Co., 1617 Pennsylvania Blvd., Philadelphia, Pa.	#9	43	L. G. Ball.
	#11	44	
	Heilwood, Pa.		
Reed Coal Co., Box 74, Distant, Pa.	#1, Elmora, Pa.	.....	Robert P. Reed.
Reitz Coal Co., Windber, Pa.	#3 "B"	421	W. H. Ritter.
	#3 Upper	422	
	#4	423	
	Central City, Pa.		
	#8, Scalp Level, Pa.	424	
Rich Hill Coal Mng. Corp., Cresson, Pa.	#1	430	R. H. Moore.
	#2	431	
	#3	.....	
	Hastings, Pa.		

Mines in Government possession 15 November 1946—Continued

CMA AREA I, DISTRICT #1—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Richland Coal Co. (Jesse W. Heeter), Route #1, Windber, Pa.	Richland Coal Co., R. D. #1, Windber, Pa.	809	J. W. Heeter.
Rimersburg Coal Co., 100 Main Street, Rimersburg, Pa.	Fox Mine	2989	P. E. Crane.
	Brady's Bend #3, Rimersburg, Pa.		
Rochester & Pittsburgh Coal Co., 655 Church St., Indiana, Pa.	Beachtree, R. D., Jefferson Co., Brockway, Pa.	5120	Heath S. Clark.
	Big Bend, Twin Rocks, Cambria, Pa.	230	
	Ernest, Ernest, Indiana Co., Pa.	154	
	Helvetia, Helvetia, Clearfield Co., Pa.	206	
	Kent #1	244	
	Kent #2, McIntyre, Indiana Co., Pa.	245	
	Kent #3	5018	
	Kent #4, Clune, Indiana Co., Pa.	247	
	Lucerne, Lucernemines, Indiana Co., Pa.	292	
	Sagamore, Sagamore, Armstrong Co., Pa.	449	
	Waterman #2, Tidedale, Indiana Co., Pa.	536	
	Yatesboro, Nu Mine, Armstrong Co., Pa.	552	
Rockhill Coal Co., 1421 Chestnut St., Philadelphia, Pa.	#1	436	J. William Wette
	#5	437	
	#9	441	
	#10, Robertsdale, Pa.	612	
Royal Quemahoning Coal Mng. Co., 1015 U. S. Natl. Bank Bldg., Johnstown, Pa.	#1	445	Robert P. Reed
	#2, Stoystown, Pa.		
Russell Mining Co., Box 779, Cumberland, Md.	Russell Mining Co., Cumberland, Md		A. H. Wilson.
Saxman Coal & Coke Co., 1414 Commonwealth Bldg., Philadelphia 7, Pa.	Harrison	199	P. M. Saxman.
	Saxman "E", Que Creek, Somerset Co., Pa.		
Shannon Co., Dudley, Pa.			
Silver Crest Coal Co., 722 Washington St., Cumberland, Md.	Silver Crest Mine, Mt. Savage, Md.	5700	William L. Sherman.
Smokeless Quemahoning Coal Co., 128 N. Center St., Somerset, Pa.	Alex #1, Somerset, Pa.	7	George A. Dickey.
South Hill Coal Co., Shawmut Bldg., Kittanning, Pa.	Seneca, Colwell, Pa.	418	E. Halberg.
Springfield Coal Corp., St. Benedict, Pa.	#1	479	Richard Peale.
	#2	281	
	#4	5664	
	#5, St. Benedict, Pa.	153	
Sterling Coal Co., 1069 Broad St. Station Bldg., Philadelphia 3, Pa.	Sterling #1	482	Robert B. Baker.
	Sterling #6, Bakerton, Pa.	484	
Stineman Coal Mining Co., South Fork, Pa.	Stineman #1	485	F. H. Stineman.
	Stineman #3, South Fork, Pa.	3761	
Stineman Coal & Coke Co., 1145 Broad St. Station Bldg., Philadelphia, Pa.	Stineman #2	486	Thomas E. Wynne.
	Stineman #4, South Fork, Pa.	487	
	Stineman #10	630	
	Stineman #6, Riverside, Pa.	229	
S. C. Streams, 661 Church St., Indiana, Pa.			
Summit Coal Corp., Spirit Bldg., Punxsutawney, Pa.	Summit #6, Dayton, Pa	738	
Summit Coal Mng. Co., Box 421, Indiana, Pa.	#1	2394	F. M. Friel.
	#2, Glenn Campbell, Pa.	833	
	#5, Starford, Pa		
Superior Cherry Run Coal Corp., 128 N. Center St., Somerset, Pa.	Cherry Run, Sligo, Clarion Co., Pa.	90	George A. Dickey

Mines in Government possession 15 November 1946—Continued

CMA AREA I, DISTRICT #1—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Superior Smokeless Coal Co., White Bldg., Indiana, Pa.	#1	596	J. Gordon Mack.
	#2 Heshbon, Indiana Co., Pa.	5021	
Hiram Swank's Sons, 1st Street, Johnstown, Pa.	#3, Dean Clearfield Co., Pa.		Albert M. Swank.
	#6, Clymer, Indiana Co., Pa.	2127	
	#10, Johnstown, Cambria Co., Pa.	499	
	#15, Pictoria, Somerset Co., Pa.	3084	
	#18, Maple Ridge, Somerset Co., Pa.		
Sylvan Grove Coal Co., Grassflat, Pa.			
Thomas Engineering Co., c/o Sam O. Polino, Elkins, W. Va. (2200-B).			
Toth Brothers, Hooversville, Pa. (see Paint Creek Collieries).			
Underhill Coal Mng. Co., St. Marys, Pa.			
Victory Coal Co., O. B. Coleman, Hooversville, Pa.	Victory Coal Co., Weigle St., Hooversville, Pa.	3794	O. B. Coleman.
Vinton Coal & Coke Co., Vintondale, Pa.	Vinton #1	528	C. M. Schwerin, Jr.
	Vinton #6 Vintondale, Pa.	529	
Waddell Coal Co., Railroad Street, Lonaconing, Md.	Waddell, Lonaconing, Md.	535	Douglas Waddell.
Walburn Coal Co., R. F. D. #1, Brockport, Pa.	Bona #2, R. D., Brockway, Pa.	745	John Bona.
Wallwork Coal Co., Summerville, Pa.	Walco #3, Sligo, Pa.	4045	J. F. Wallwork.
Walnut Run Coal Co., Box 145, Barnesboro, Pa.	Byrnes #1, Barnesboro, Pa.	74	M. A. Byrnes.
D. G. Wertz Coal Co., 1st Nat'l Bank Bldg., Greensburg, Pa.	Corbett Mine, West Lebanon, Pa.	4026	D. G. Wertz.
West Freedom Mng. Co., Sligo, Pa.			
White Bridge Coal Co., Box 295, Indian Head, Pa.	White Bridge Coal Co. #1, Indian Head, Pa.	4080	John L. Smith.
Wilbur Coal Mng. Co., Hooversville, Pa.	Knickerbocker #3		Clammer B. Berkey.
	Knickerbocker #4 Hooversville, Pa.	256	
Wilmore Fuel Co., 116 Market St., Johnstown, Pa.	Mack #2, Clymer, Pa.	308	C. C. Dovey.
Wolf Den Coal Corp., Shallmar, Md.	Wolf Den, Shallmar, Md.	546	H. A. Marshall.
F. B. Wood Coal Mining Co., 800 Chestnut St., Barnesboro, Pa.	Foxburg #1, Barnesboro, Pa.	1685	Frank B. Wood.
Yorkshire Coal Co., Madera, Pa.	Yorkshire Mine	554	M. McGlynn.
	Universal #1	618	
	Homestead Madera, Pa.		
Zeth Coal Co., Hopewell, Pa.	Zeth Kelly	2280	N. P. Zeth.
	Zeth Barnett Hopewell, Pa.	5615	

CMA AREA I, DISTRICT #2

Acme Coal Co., Box 355, Charleroi, Pa.			
Airey Coal Co., 623 F. T. & T. Bldg., Uniontown, Pa.			
Alice Coal Mining Co., Oliver, Pa.	Alice, Collier, Pa.	1021	Leo. Duncan.
Allegheny Coal & Coke Co., Brackenridge, Pa.	#2, Bracken, Pa.	9	Lewis W. Hicks.
Allegheny Contracting Co., 101 Hargrove St., Pittsburgh, Pa.	Vegeler #1, East McDonald, Pa.	4034	O. H. Benintend.
	Vegeler #2, Midway, Pa.	4177	
Allegheny Pittsburgh Coal Co., 14 Wood St., Pittsburgh 30, Pa.	Springdale Mine, Parnassus Branch, New Kensington, Pa.	215	A. N. Cartwright.
William Aloe Coal Co., Box 564, Imperial, Pa.	Rider Mine	2489	William Aloe.
	Bertram Mine R. D. #1, Imperial, Pa.	4382	
Altmire Brothers, Box 236, North Apollo, Pa.			
Altmire & Shick Coal Co., Box 236, North Apollo, Pa.	Painter	4067	Harold Altmire.
	Beck Box 236, North Apollo, Pa.		

Mines in Government possession 15 November 1946—Continued

CMA AREA I, DISTRICT #2—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
American Zinc & Chemical Co., Langeloth, Pa.	Langeloth, Langeloth, Pa.	119	B. N. Zimmer.
Ann Coal Co., Fayette City, Pa.	Ann Coal Co., Box 308, Fayette City, Pa.		Walter Woznick.
Atlantic Crushed Coke Co., 121 N. Main St., Greensburg, Pa.	Seger, R. D. #1, Derry, Pa.	202	S. J. Burkel.
	Salem, R. D. #2, New Alexandria, Pa.	265	
	Atlantic, New Derry, Pa.	6	
Avonmore Coal & Coke Co., Market Street, Leechburg, Pa.	Gilpin	81	L. W. Hicks.
	Valley Leechburg, Pa.	230	
Barnes Coal Co., Masontown, Pa. (2200-B).			
Joseph Baucant, Trust Bldg., McDonald, Pa.	Presutti #2, Primrose, Pa.	2360	
Beatty Coal Co., 501 1st Nat'l Bank Bldg., Latrobe, Pa.	Duquesne Mine	284	J. F. Beatty.
	Beech Creek Mine Latrobe, Pa.		
Bethlehem Steel Co. (Industrial Collieries Corp.), 701 E. 3rd St., Bethlehem, Pa. (also in D-1 and D-3).	Ellsworth #52	2498	M. L. Jacobs.
	Capeburg #53	2499	
	Marianna #58 Ellsworth, Pa.	2500	
Blaney-Strawn Coal & Coke Co., Star Junction, Pa.	Washington Mine, Star Junction, Pa.	2157	A. E. Strawn.
	Strawn #2, Wickhaven, Pa.	2745	
Boliver Fuel Co., Boliver, Pa. (2200-B)			
Bortz Coal Co., Union Trust Bldg., Uniontown, Pa.			
Bowman Coal Co., Market St., Leechburg, Pa.	Bowman Mine, Leechburg, Pa.	17	L. W. Hicks.
George K. Brennen, 207 Brennen Bldg., Scottdale, Pa.	Myers #3, Mount Pleasant Twp., Tarr, Pa.	159	George K. Brennen.
Buckeye Coal Co., Stambaugh Bldg., Youngstown 1, Ohio.	Nemacolin, Nemacolin, Pa.	164	S. L. Mautho.
	Grove City Strip, Grove City, Pa.	3033	
Bulger Block Coal Co., 1083 Union Trust Bldg., Pittsburgh 19, Pa.	#1	285	J. Cobb.
	#2 State St., Oakdale, Pa.	4113	
Butler Consolidated Coal Co., Wildwood, Pa.	Wildwood, Wildwood, Pa.	242	F. G. West.
	Kincaid, Karns City, Pa.	115	
Byars Coal & Coke Co., 408 Arthur Ave., Scottdale, Pa.	Jane, Scottdale, Pa.	105	John W. Byars.
C. & C. Coal Co., Clinton, Pa.	Ruth, Clinton, Pa.	4033	
Calabro & Trelfall, 593 W. Pike Street, Canonsburg, Pa.	DeCook, Bulger, Pa.	4452	Dominick Calabro.
Chas. E. Campbell, Box 431, Bridgeville, Pa.	Maude Mine, Box 431, Bridgeville, Pa.	339	Chas. E. Campbell.
Carnegie-Illinois Steel Corp., 434 5th Avenue, Pittsburgh, Pa.			
Carpentertown Coal & Coke Co., 515 2nd National Bank Bldg., Uniontown, Pa.	Carpentertown Mine, Mt. Pleasant, Pa.	386	W. T. McGee.
Carr Coal Company, Shields Bldg., Ross Avenue & Wood Street, Wilkinsburg, Pittsburgh 21, Pa.	Carr #1, Shields Bldg., Wilkinsburg, Pittsburgh 21, Pa.	313	John S. Carr.
Castle Shannon Coal Corp., 843 Wabash Bldg., Pittsburgh, Pa. (also in D-1 and D-6).	#8 Coverdale, Pa.	224	J. C. Forrest, Jr.
Chartiers Gas Coal Company, 1422 Oliver Bldg., Pittsburgh, Pa.	Magnolia, 407 Woodland Rd., Cannonsburg, Pa.	196	T. F. Springer.
Cipolla Fuel Corp., P. O. Box 612, New Kensington, Pa.	Valley Camp Mine, New Kensington, Pa.	2134	Steve Cipolla.
Clickovich & Savage Coal Co., 922 Hill Street, Belle Vernon, Pa. (2200-B).			
Coal Hollow Coal Co., Box 263, West Newton, Pa.	Coal Hollow Coal Co., West Newton, Pa.	1357	George B. Hoffman.
Joseph Coates Coal Co., Box 426, Imperial, Pa.	Beatrice #2, R. D. #1, Clinton, Pa.	2302	George Christopher.
Cochran Coal Co., 34 W. 4th Street, Williamsport, Pa.	#1, Salina, Pa.	38	C. Earle Blair.
Consumers Mining Co., 1134 Market Street, Wheeling, W. Va.	Harmarville Mine, Harmarville, Pa.	88	G. W. Hewitt
Cornish & Dickerson Coal Co., 166 N. Gallatin Avenue, Uniontown, Pa.			
Cosco Gas Coal Co., 601 B. C. N. Bank Bldg., Butler, Pa.	Cosco #1, R. D. #1, Butler, Pa.	41	W. E. Stover.
	Cosco #2, R. D. #1, Butler, Pa.	42	

Mines in Government possession 15 November 1946—Continued

CMA AREA I, DISTRICT #2—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
I. E. Coyer, Rt. #1, Grove City, Pa.	I. E. Coyer Mine, Grove City, Pa.	1119	I. E. Coyer.
Creighton Fuel Co., Freeport Rd, Creighton, Pa.	Creighton, Creighton, Pa.	48	V. L. Henry.
Crow's Nest Mining Co., R. D. #2, Greensburg, Pa.	Crow's Nest, Greensburg, Pa.	52	F. E. Battle.
Crucible Steel Co. of America, Crucible Fuel Division, 2041 Oliver Bldg., Pittsburgh, Pa.	Crucible, Crucible, Greene Co., Pa.	58	W. H. Colvin.
Crystal Mining Co. (Edward S. Higbee), Box 136, Gans, Pa.	Crystal, Gans, Pa.	478	Edward S. Higbee.
Culmerville Coal Co., Route #2, Tarentum, Pa.	Mutual #3, Tarentum, Pa.	158	George Batcher.
Thomas J. Curry, 218 Morgantown St., Uniontown, Pa.			
Daugherty Coal Company, 203 Monongahela City Trust Bldg., Monongahela, Pa.			
Davidson-Connellsville Coal & Coke Co., 2nd National Bank Bldg., Connellsville, Pa.	Frederick #1, Connellsville, Pa.	74	W. J. Davidson.
Deacon, Pickens & Wright (Dennis K. Pickens), Clinton, Pa.	Miller Mine, Clinton, Pa.	620	George P. Deacon, Jr.
Deer Field Coal Co., Shields Building, Ross Ave. & Wood St., Wilkinsburg, Pittsburgh 21, Pa.	Clements	2224	John S. Carr.
Delmont Fuel Co., 411 Bank & Trust Building, Greensburg, Pa.	Deer Renton, Pa.		
	#7, Delmont, Pa.	4036	R. H. Jamison, Jr.
	#9, Manor, Pa.	4337	
	#10, R. D. #1, Ruffsdale, Pa.	4043	
Diamond Coal Co., W. Church Street, Masontown, Pa.			
Dick Construction Co., 2532 Library Road, Pittsburgh 10, Pa.	Inrun #2, Harmarville, Pa.	4130	Noble J. Dick.
Dohm Coal Co., Lemont Furnace, Pa. (2200-B).			
Duquesne Light Co., 435 Sixth Avenue, Pittsburgh 19, Pa.	Harwick, Harwick, Pa.	9997	Pressly H. McCance.
Eastern Gas & Fuel Associates, Koppers Coal Division, Pittsburgh 19, Pa. (also in D-1, D-3, D-7 and D-8).	Warwick, Greensboro, Pa.	9998	
	Butler Junction, Leechburg, Pa.	23	L. C. Campbell.
Eberly Coal & Coke Co., 208 Union Trust Bldg., Uniontown, Pa.			
Elrama Mng. Co., 229 W. Main St., Monongahela, Pa. (2200-B).			
Emerald Coal & Coke Company, Grant Building, Pittsburgh 19, Pa.	Emerald, Clarksville, Pa.	60	J. H. Hillman, Jr.
Eureka Fuel Co., Dilliner, Pa.	Eureka Fuel Co., Dilliner, Pa.	2581	H. D. Dawson.
Fancy Hill Coal Co., Lake Lynn, Pa.	Eagle Mine, Lake Lynn, Pa.	56	Ray Blosser.
Farrar & Nagode, Box 454, Midway, Pa.	Dickson, Box 454, Midway, Pa.	4118	John C. Farrar.
Fayette Fuel Co., 108 N. Beeson Ave., Uniontown, Pa.	Redstone, Brownfield, Pa.	395	J. L. Hankins.
Ford Collieries Co., Biddle Avenue, Wyandotte, Michigan.	Leith Coke Plant, Leith, Pa.		
Ford and Gaskill, Greensboro, Pa.	Francis, Curtisville, Pa.	72	F. A. Huber.
H. C. Frick Coke Co., Frick Bldg., Pittsburgh 30, Pa.	Berry, Bairdsford, Pa.	71	
	Bridgeport, So. Brownsville, Pa.	2174	Harry M. Moses.
	Colonial #3	38	
	Colonial #4 Roscoe, Pa.	39	
	Continental #2, Pittsburgh, Pa.	40	
	Filbert, Antram, Pa.	67	
	Gates, Gates, Pa.	77	
	Kyle, Kyle Colliery, Pa.	118	
	Leisenring, Leisenring, Pa.	2171	
	Maxwell, Maxwell, Pa.	146	
	Phillips, Pittsburgh, Pa.	178	
	Shoaf, Shoaf, Pa.	2173	
	Oliphant, Pittsburgh, Pa.	3067	
	Palmer, Antram, Pa.	2170	
	National #1, Sygan, Pa.	181	
	National #3, Muse, Pa.	182	
	Hanes, Canonsburg, Pa.	90	

Mines in Government possession 15 November 1946—Continued

CMA AREA I, DISTRICT #2—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
H. C. Frick Coke Co., Frick Bldg., Pittsburgh 30, Pa.	Robena, Ronco, Pa	194	Harry M. Moses
	Dearth, Low Phos, Pa	4042	
	Crossland Ovens		
	Collier Ovens		
	Iverson Shop		
	Ralph Shop		
	Leckrone Timber (Treating Plant).		
	Redstone		
	National #4		
	Sharon #2		
	Continental #2		
	Dilworth		
	Dorothy		
	Hecla #1		
Galiardi Coal & Coke Co., 2nd Nat'l Bank Bldg., Connellsville, Pa.	Crawford #10, Shoaf, Pa	4144	Philip Galiardi.
	Patty Strip Mine, Cheat Haven, Pa.	4234	
	York Run Beehive Coke Operation, York Run, Pa.		
Paul E. Garbart, Box 497, Uniontown, Pa.			
Gilmore Coke Co., Fayette Title & Trust Bldg., Uniontown, Pa.	Gilmore, Gilmore, Pa	975	Ray L. Havner.
James Gilmore, 935 Heslop Ave., Donora, Pa.	Equitable Mine, Webster, Pa.	4109	James Gilmore.
Granger Coal Co., 712 Vermont Ave., Glassport, Pa.	Granger #2, Glassport, Pa.	2515	John Granger.
Greene County Coal Company, Route 1, Dilliner, Pa.	Gapen, Poland, Pa	1053	August Valli.
Greensburg-Connellsville Coal & Coke Company, Union Trust Bldg., Pittsburgh 19, Pa.	Francis, Burgettstown, Pa	73	Charles B. Baton.
	Hubbard, Eden Park, Pa	93	
Grippo Coal Co., Box 1069, Butler, Pa			
Guseman Bros. Coal Co., 113 E. Main St., Uniontown, Pa.			
Guseman & Hall, 113 E. Main Street, Uniontown, Pa.			
H. H. & N. Coal Company, Maidsville, W. Va. (2200-B).			
Haas Coal Co., 1420 Farmers Bank Bldg., Pittsburgh, Pa.	Haas, Bull Creek Rd., Tarentum, Pa.	570	L. W. Hicks.
Harner Coal Company, 12 Second Street, Fayette City, Pa.			
Harbaugh Coal Co., R. F. D. #1, Hunker, Pa.	Betty Mine, Madison, Pa.	2168	J. C. Harbaugh.
Harmon Creek Coal Corp., 1st National Bank Bldg., Pittsburgh, Pa.	Florence, Burgettstown, Pa	68	James T. Hillman.
Harrison & Quinette Coal Co., R. F. D. #1, Glenshaw, Pa.	H. & Q., Glenshaw, Pa	574	F. W. Harrison.
Hayes Coal Co., 312 Chestnut St., Scottsdale, Pa.	#3, Avyano, Pa	4140	T. W. Hayes.
Henckel Coal Co., Fayette Title & Trust Bldg., Uniontown, Pa.	Morgan, Smithfield, Pa	4291	Elmer T. Henckel.
J. A. Hill Coal Co., 44 Norma St., Crafton, Pittsburg 5, Pa.	Reiter #2 Mine, Rd. 1, McPoland, Poland Mines, Greene Co., Pa.	649	J. A. S. Hill.
Hillman Coal & Coke Co., Grant Bldg., Pittsburgh, Pa. (also in D-1)	Kees Rocks, Pa.	180	J. H. Hillman, Jr.
	Alicia #3, R. D. #1, Greensboro, Greene County, Pa.	2662	
	Ontario, Eighty-Four, Washington Co., Pa.	170	
	Gibson, Bentleyville, Washington Co., Pa.	80	
	Black Diamond, Hazzard, Washington Co., Pa.	2414	
	Oakmont, Barking, Allegheny Co., Pa.	165	
	Washington, Washington, Washington Co., Pa.	229	
	Clyde #2, Clarksville, Greene Co., Pa.	34	
M. Hudik & Sons Coal Co., Box 184, Greensboro, Pa.	Ress #5, Greensboro, Pa	4374	Matthew Hudik.
Irwin Gas Coal Corp., 121 N. Main St., Greensburg, Pa.	Irwin #4, Slickville, Pa	98	John B. Brunet.

Mines in Government possession 15 November 1946—Continued

CMA AREA I, DISTRICT #2—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Island Coal Co., Box 391, Waynesburg, Pa.			
Jamison Coal & Coke Co., 116 N. Main St., Greensburg, Pa. (also in D-3).	#2, Hannastown, Pa	102	Ralph E. Jamison.
	#20, Pleasant Unity, Pa	104	
	#21, Hostetter, Pa	340	
Jefferson Coal & Coke Corp., 140 Clokey Avenue, Mt. Lebanon, Pa.	Jefferson Coal & Coke Corp., Avella, Pa.		W. A. McBride.
	Jefferson Coal & Coke Corp., Burgettstown, Pa.		
Fred John, Box 16, New Derry, Pa.			
Jones & Laughlin Steel Corp., 3rd Avenue & Ross St., Pittsburgh 30, Pa.	Vesta #4, California, Washington Co., Pa.	231	C. C. Henning.
	Vesta #5, Vestaburg, Washington Co., Pa.	232	
	Vesta #6, Denbo, Washington Co., Pa.	233	
	Shannopin, Bobtown, Greene Co., Pa.	204	
Keystone Coal Company, 114 N. George Street, York, Pa.	Mooween, Mooween, Pa	155	William H. Baker.
King Bros. Coal & Coke Co., Byrne Bldg., Scottdale, Pa.	Marguerite, Marguerite, Pa	143	Eugene P. Howard.
Kiski Valley Coal Co., New Bethlehem, Pa.	#3, Apollo, Pa	117	H. F. Brennan.
Frank Kopriva, Route #3, Beaver Falls, Pa.	Kopriva, Beaver Falls, Pa.	765	Frank Kopriva.
Lake Lynn Fuel Co., Ltd., Lake Lynn, Pa.			
Langenfelder Mining Co., Box 402, Mt. Pleasant, Pa.	Youngwood #3, South Greensburg, Pa.	4085	W. K. Shewbridge.
	Drennen #2, Finleyville, Pa.	4450	
	George, New Kensington, Pa.		
Latrobe Coal & Coke Co., 1st National Bank Bldg., Latrobe, Pa.	D. John #5, Superior, Pa.	1545	P. B. Klingensmith.
Leckrone Coal & Coke Co., R. F. D. #1, Box 16, McClellandtown, Pa.	Leckrone #2, Leckrone, Pa.	4294	Emilie Erminio.
	Irwin #11, Amend, Pa.	99	
	Shoaf #2, Shoaf, Pa.	2592	
	Puritan #1, Puritan, Pa.		
Leechburg Mining Company, Box 6, Leechburg, Pa.	Foster #4	70	L. W. Hicks.
	Foster #5	71	
	Leechburg, Pa.		
	Armstrong, Leechburg, Pa.	4	
Lemont Coal Company, 515 2nd National Bank Bldg., Uniontown, Pa.	Cornish	986	T. McGee.
	Tunnel	1653	
	Outcrop, Pa.		
Leonard Coal Co., R. D. #1, Dilliner, Pa.	Everly, R. F. D. #1, Dilliner, Pa.	1064	Joseph Leonard.
Ligonier Coal Co. (Robert J. Frank), 403 Summit Avenue, Ligonier, Pa.	Bertha Property, Burgettstown, Pa.	4219	Robert J. Frank.
Logans Ferry Coal Co., 33 Frankford Lane, New Kensington, Pa.	Logans Ferry Hill, New Kensington, Pa.	597	Stephen C. Bednar.
Long & McAlpine Coal Co., Box 357, Herminie, Pa.	Ellena		J. H. Long.
	Walnut Hill	4385	
	Herminie, Pa.		
Loyalhanna Fuel Co., Slickville, Pa.	Louise #2	130	Albert V. Eisaman.
	Mt. Grey	4222	
	Slickville, Pa.		
Luxner Coal Co., Carmichaels, Pa.	Sunshine	4436	Albert Luxner.
	Cathy	4108	
	Poland, Pa.		
M. & M. Coal Co., Box 95, Dunlevy, Pa	Beechwood #2, Speers, Pa	409	D. Alexsonshk.
Maher Coal & Coke Co., 1420 Farmers Bank Bldg., Pittsburgh, Pa.	#4, Beechburg, Pa	137	R. C. Maher.
Mammoth Coal & Coke Co., Mammoth, Pa.	#1, Mammoth, Westm'd County, Pa.	2266	R. R. Newhouse.
Manning Coal Co., Box 1608, Uniontown, Pa.			
Marie Coal Company, Box 462, Fairchance, Pa.			
Mather Collieries, Pickand Mather and Co., 300 Union Commerce Bldg., Cleveland 14, Ohio.	Mather, Mather, Pa	145	E. Allan Brookes.
Henry Matthews, R. D. #1, Lemont Furnace, Pa. (2300-B).			

Mines in Government possession ... November 1946—Continued

UMA AREA I, DISTRICT #2—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
F. C. Mayer, 702 Bank Street, Bridgeville, Pa.			
Mazzaro Coal Co., 181 McCoy Road, McKees Rocks, Pa. (2200-B).			
McBride Coal Company, 1707 Mifflin Rd., Pittsburgh 7, Pa.			
McClane Mining Co., Washington Trust Bldg., Washington, Pa.	Rich Hill, Meadowlands, Pa.	334	W. H. McClane.
McCormick Coal Co., Box 287, Butler, Pa.			
McDonald Mining Co., Oakdale, Pa.			
McKetta Coal Co., Yukon, Pa.			
McLean Coal Co., Bridgeville, Pa.	Vulcan Mine, Treveskyn, Pa.	235	W. F. McLean.
Mid Atlantic Coal Co., 520 Grant Bldg., Pittsburgh, Pa. (2200-B).			
W. J. Miller, Sturgeon, Pa.	Miller (Deep) Miller (Strip) Sturgeon, Pa.	621	W. J. Miller.
Millerstown Coal Co., Route #2, Tarentum, Pa.	Victory, Culmerville, Pa.	555	George Batcher.
Moffitt Coal Company, R. F. D. #1, Daisytown, Pa.	Moffitt, Daisytown, Pa.	1224	Paul R. Moffitt.
Molnar Bros. Coal Co., Poland Mines, Pa.			Michael N. Molnar.
Monongahela Coal Co., 229 W. Main Street, Monongahela, Pa. (2200-B).			
Montour Valley Coal Co., Adam Maida, Box 141, Oakdale, Pa. (2200-B).			
Mullett Coal Co., 3424 Liberty Ave., Pittsburgh 1, Pa.	#3, Box 307, Burgettstown, Pa.	4271	D. D. Mullett.
Nard Engineering & Mining Co., 947 Butler St., Etna, Pa. (2200-B).			
A. J. Nassar & Sons, Greensboro, Pa.			
National Steel Corp., 2800 Grant Bldg., Pittsburgh, Pa.	National Steel Mine, Florence, Pa.	2030	T. E. Millsop.
Nobel & Gray Coal Co., R. D. #4, Box 181-A, Uniontown, Pa. (2200-B).	#3, Uniontown, Pa.		M. Nobel.
North Star Coal Co., 604 Bessemer Bldg., Pittsburgh, Pa.	Jean #1, Imperial, Pa.	4338	Alexander C. Speyer, Jr.
Peter Novotny, 1385 Fourth Ave., New Kensington, Pa. (2200-B).			
Old La Belle Mine, 1922 Farmers Bank Bldg., Pittsburgh, Pa.			J. G. Hoffstat.
Ollett Coal Co., Box 311, Bridgeville, Pa.			
Oliphant Coal Co., Rt. 2, Box 220, Uniontown, Pa.			
Alex E. Paris Contr. Co., Studa, Rea, Pa. (2200-B).			
Park Coal Co., Market Street, Leechburg, Pa.	Park Mine, Leechburg, Pa.	4110	L. W. Hicks.
Patterson Construction Co., 10th & R. R. Sts., Monongahela, Pa.	#3, Poland, Pa.	4399	Frank O. Patterson.
Penn Valley Mining Co., 437 Cavitt Avenue, Trafford, Pa.			
Pennsalt Coal Co., 1000 Widener Bldg., Philadelphia 7, Pa.	Natrona #1, Natrona, Pa.	163	Walter S. Malcolm.
Pennsylvania Coal Co., Gray Law Bldg., Uniontown, Pa.			
Penowa Coal Co., 2617 Grant Bldg., Pittsburgh 19, Pa.			
Pine Run Co., Market Street, Leechburg, Pa.	Lewis, Leechburg, Pa.	124	L. W. Hicks.

Mines in Government possession 15 November 1946 -Continued

CMA AREA I, DISTRICT #2—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Pittsburgh Consolidation Coal Co., 2000 Koppers Bldg., Pittsburgh 19, Pa. (also D-1). (D-3 Consolidation Coal Co. (W. Va.).) (D-7 Consolidation Coal Co. (Ky.).)	#3, Renton, Pa	187	G. A. Shoemaker.
	#6, No. Bessemer, Pa	188	
	Clinton Block, Clinton, Pa	2318	
	Banning #1, Van Meter, Pa	10	J. B. Morrow.
	Banning #2, Whitsett, Pa	11	
	Crescent #1, Daisytown, Pa	49	
	Euclid, R. D. 1, Smithton, Pa.	62	
	Henderson #1, Hendersonville, Pa.	92	
	Lindley, R. D. 1, Canonsburg, Pa.	128	
	Mathies, R. D. 2, Finleyville, Pa.	4255	
	Midland, Houston, Pa	148	
	Mongah, Monongahela, Pa	150	
	Montour #4, Lawrence, Pa	151	
	Montour #9, McDonald, Pa	152	J. B. Morrow.
	Montour #10, Library, Pa	20	
	Ocean, Smithdale, Pa	166	
	Solar, R. D. 1, Imperial, Pa	211	
	Sothmers, Pricedale, Pa	212	
	Warden, Sutersville, Pa	237	
	Westland, Westland, Pa	1254	
	Chambers, Clairton, Pa		
	Russell #1		
	Russell #2 Imperial, Pa.	4121	
Pittsburgh & Erie Coal Co., P. O. Box 1123, Erie, Pa.	Grant #1, R. D. #5, Slippery Rock, Pa.	84	A. G. Scheiderhelm.
Plummer & James, 2 Beaver Road, Sewickley, Pa.	#4, Box 107, Brownfield, Pa	4461	J. Lee Plummer.
Potsvue Coal Co., Martin, Pa.			
Powrance Coal Co., Russellton, Pa. (2200-B)			
Ponterero Coal Co., Masontown, Pa.			
Poole Coal Co., Box 250, Delmont, Pa.	Poole, Delmont, Pa	475	E. Z. Poole.
Jess L. Price, R. F. D. 72, Point Marion, Pa. (2200-B).			
Primrose Mining Co., 504 Magee Bldg., Pittsburgh, Pa.	#3	4277	H. Simon.
	#3		
	#3. Carnegie, Pa., Ewing Road. Campbell's Road, Carnegie, Pa. Hodgson Road, Carnegie, Pa.		
Mrs. M. Principini, Box 766, Point Marion, Pa.	M. Principini, Box 766, Point Marion, Pa.		M. Principini.
Rolland Coal Co., Clinton, Pa. (2200-B)			
Republic Steel Corp. (E. B. Winning, Ass't. to V. Pres.), 1608 Republic Bldg., Cleveland 1, Ohio (also in D-8 and D-13).	Russellton, Russellton, Allegheny Co., Pa.	197	J. L. Hamilton.
	Crescent #2, Fredericktown, Green Co., Pa.	50	
	Indianola, Indianola, Allegheny Co., Pa.	96	
	Crescent Strip, Fredericktown, Green Co., Pa.	50	
	Brownsville Jct., Brownsville, Fayette Co., Pa.	21	
	Clyde, Frederick, Green Co., Pa.	33	
Romesberg Brothers, Box 149, Uniontown, Pa.			
S. & U. Coal Co., Box 297, Wyano, Pa.	S. & U. Coal Co., Wyano, Pa.	2151	Stanley Skeloski.
J. L. Sager Coal Co., Second Street, Smithton, Pa.	Sager, Smithton, Pa	1393	J. L. Sager.
Shady Lane Coal Co., 212 Port Street, Scottdale, Pa. (2200-B).			

Mines in Government possession 15 November 1946—Continued

CMA AREA I, DISTRICT #2—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Shane Brothers, P. O. Box 166, Rochester, Pa.	Shane, Shippingport, Pa.	785	H. R. Shane.
Silhol Coal Co., 316 Station St., Bridgeville, Pa.			
Sims Lumber Co., R. F. D. #4, Washington, Pa. (2200-B).			
Simyak Coal Co., Box 91, Brownsville, Pa.			
Solar Fuel Company, 600 Locust Street, McKeesport, Pa.			
Springer Coal Co., 1422 Oliver Bldg., Pittsburgh 4, Pa.	Enterprise, 407 Woodland Rd., Cannonsburg, Pa.	61	T. F. Springer.
Standard Coal Co., 2615 Grant Bldg., Pittsburgh, Pa.	Standard Mine #6	4015	
	Standard Mine #9	4430	
	Sasso Mine #5	4001	
Mike Starvaggi Coal Co., Weirton, W. Va. (2200-B).	#3 Penn. Mine, Florence, Pa.		Mike Starvaggi.
Sunnyhill Coal Co., 3090 W. Liberty Avenue, Pittsburgh 16, Pa.	#5, Imperial, Pa.	2744	C. H. Snyder.
Swaney & Moats, Box 388, Uniontown, Pa.			
Edward Tomajko, Adamsburg, Pa.	Adamsburg, Adamsburg, Pa.	2	Edward Tomajko.
Edward Tomajko, Jr., Adamsburg, Pa.	Little Gem, Adamsburg, Pa.	2682	Edward Tomajko, Jr.
Top Block Mine, Inc., Box 128, Beaver, Pa.	Top Block, R. D. #1, Coraopolis, Pa.	373	C. M. Webster.
Tremont Coal Co., P. O. Box #6, Belle Vernon, Pa.	#2	325	S. M. Speers.
	#3		
	Landon Station, Pa.		
Twin River Co., 600 Locust Street, McKeesport, Pa.			
Unity Coal Co. (C. L. Amend), R. F. D. #3, Latrobe, Pa.			
The Utah Construction Co., P. O. Box 87, McDonald, Pa. (2200-B)	Russell #1, Champion, Pa.		Merle H. Busby.
	Russell #2, Imperial, Pa.		
V. & J. Coal Co., Grove City, Pa.	Hunt #1, Dilliner, Pa.	4139	Deno Juliani.
John Vaslosky, Box [illegible] R. D. #2, Smithfield, Pa. (2200-B)			
Victoria Coal Co., 325 Oneida Street, Monessen, Pa.	Johnson, Pricedale, Rostraner Twp., Pa.	465	A. L. Brantegam.
Washington Coal Co., Box 452, Apollo, Pa.	Washington, Apollo, Pa.	1421	Peter Marco.
Wayne Coal Mining Co., 1914 Grant Bldg., Pittsburgh, Pa.	Moffitt, Dilliner, Greene Co., Pa.	236	J. H. Hillman, Jr.
Weirton Coal Co., Main Street, Weirton, W. Va.	Isabelle, Isabelle, Pa.	100	T. E. Millsop.
	National Steel Mine, Florence, Pa.		
Paul H. Weise, 627 Oliver Bldg., Pittsburgh, Pa.	Marie	156	
Welling Coal Co., 809 Pittsburgh Street, Springdale, Pa.			
Westmoreland Mining Co., Campbell Street, Blairsville, Pa.	Graff #1	82	F. H. Coleman.
	Graff #2	83	
	R. D. #3, Blairsville, Pa.		
	Roaring Run, R. D. #2, Apollo, Pa.	193	
	Tunnelton, Tunnelton, Pa.	2325	
	Watson, Mooween, Pa.	238	
Westmoreland Coal Co., 2300 Fidelity-Philadelphia Trust Bldg., Philadelphia 9, Pa.	Adams #1	1	E. B. Leisenring.
	Export	65	
	Hutchinson	95	
	Magee	135	
	McCullough	132	
	Irwin, Pa.		
Whycl Coke Co., 97 East Main Street, Uniontown, Pa.	Donald #3, Gray's Landing, Pa.	3081	Thomas M. Whycl.
	Crawford, Near Shosf, Pa.	43	
Williams Coal Co. (W. J. Stewart), 2333 Freeport Rd., New Kensington, Pa.			
Wynn Coal & Coke Co., Box 125, Fairchance, Pa.	Wynn	251	Thomas P. Ruane.
	Wynn Strip	251	
	Dick Strip	4245	
	Fairchance, Pa.		

Mines in Government possession 15 November 1946—Continued

CMA AREA 1, DISTRICT #3

Mining company and address	Mine name and address	Index No.	Operating manager
Alsted Coal Company, Flemington, W. Va.	Gypsey Mine, Gypsey, W. Va.	2117	A. R. Reppert.
Manuel Alvarez, Box 125, Meadowbrook, W. Va.	Lamberts Run #2, Meadowbrook, W. Va.	375	Manuel Alvarez.
Antolini Coal Co., Harding, W. Va.	Antolini, Harding, W. Va.	507	Rocco Antolini.
B. & C. Coal Co., P. O. Box 233, Kingwood, W. Va.	Wilmoth Mine #1	138	B. C. Cence.
	Wilmoth Mine #2 Kingwood, W. Va.	2200	
Becker County Sand & Gravel Co., Box 2188, Clarksburg, W. Va.	Byron, Clarksburg, W. Va.	2191	M. C. Evans.
Bethlehem Fairmont Coal Co., Flemington, W. Va.	Scott #2, Shinnston, W. Va.	136	A. R. Reppert.
Bethlehem Steel Corp., 701 E. Third Street, Bethlehem, Pa. (Industrial Collieries Corp. a subsidiary) (also in D-1 and D-2).	#41 Barrackville	1368	M. L. Jacobs.
	#43 Carolina, Barrackville, W. Va.	41	
	#21 Richard, Dellslow, W. Va.	1367	
Blackburn Coal Co., 4019 East Avenue, Shinnston, W. Va.	Blackburn #3, Shinnston, W. Va.	1315	Guy A. Hardesty.
Boothsville Coals, Inc., Box 147, Fairmont, W. Va. (2200-B).	Clelland #1, Fairmont, W. Va.	.....	Clark Ott.
Bretz Fuel Co., Box 386, Morgantown, W. Va.	.....	.....	.....
Brock, Inc., Box 638, Morgantown, W. Va.	#4, Cassville, W. Va.	44	F. E. Christopher.
Brown Fuel Co., 46 East Main Street, Uniontown, Pa.	Henshaw, Brownton, W. Va.	77	E. D. Brown.
Canyon Coal & Coke Co., 521 Fayette Title & Trust Bldg., Uniontown, Pa.	.....	.....	.....
Cherry River Coal & Coke Co., 70 Pine Street, New York 5, N. Y. (Operates mine for: Donegan Coal & Coke Co., same address).	Donegan, Near Fenwick, W. Va.	135	J. R. Maust.
Christopher Coal Co., Box 638, Morgantown, W. Va.	#3, Osage, W. Va.	133	F. E. Christopher.
Christopher Mining Co., Box 638, Morgantown, W. Va.	#6, Four States, W. Va.	4	F. E. Christopher.
Christopher Mining Corp., Box 638, Morgantown, W. Va.	#2, Maidsville, W. Va.	127	F. E. Christopher.
Christopher National Coal Co., Box 638, Morgantown, W. Va.	National Mine, Morgantown, W. Va.	2031	F. E. Christopher.
Clare Coal Co., Flemington, W. Va.	Clare Mine, Rosemont, W. Va.	49	A. R. Reppert.
Clark Coal Company, 704 Benoni Avenue, Fairmont, W. Va.	#1	160	John A. Clark, Jr.
	#4	247	
	#7 Everson, W. Va.	1378	
Columbia Coal Co., Flemington, W. Va.	Columbia Mine, Clarksburg, W. Va.	1360	A. R. Reppert.
Consolidation Coal Co. (W. Va.), Fairmont, W. Va. (see Pittsburg Consolidation Coal Co.).	.....	.....	.....
Cornell Coke Co., Morgantown, W. Va.	.....	.....	.....
Cromling & Harrold, Box 328, Fairmont, W. Va.	Cromling & Harrold, Rt. 2, Shinnston, W. Va.	.....	Paul Harrold.
Davis Wilson Coal Co., Box 859, Morgantown, W. Va.	Bunker Mine, Cassville, W. Va.	30	R. M. Davis.
Dawson Coal Company, 1617 Pennsylvania Blvd., Philadelphia, Pa.	Dawson, Hepzibah, W. Va.	46	L. G. Ball.
Rinaldo Di Cenzo, Republic, Pa.	.....	.....	.....
Eastern Gas & Fuel Associates (Koppers Coal Division), Koppers Building, Pittsburgh 19, Pa. (also in D-1, D-2, D-7, and D-8).	Federal #1, Grant Town, W. Va.	55	L. C. Campbell.
	Federal #3, Everettville, W.	56	
Eleanor Coal Co., R. F. D. #2, Flemington, W. Va.	Barbour, Berryburg, W. Va.	412	Harry R. Hall.
Elk Lick Coal Co., 912 First National Bank Bldg., Scranton, Pa.	Gauley #2	60	F. L. Dakin.
	Gauley #3 Richwood, W. Va.	1363	
Ex-Cell Coal Company, 1922 Farm Bank Bldg., Pittsburgh, Pa.	Laura Lee, Robey, W. Va.	89	J. G. Hoffstat.
Fairfax Mining Co., 208 Newton Street, Fairmont, W. Va.	Arthurdale, Reedsville, W. Va.	167	Leslie Larsen.
Fairmont & Baltimore Coal & Coke Company, 33 South Gay Street, Baltimore 2, Md.	Willard, Shinnston, W. Va.	146	A. P. Adams.
	Fairmore, Clarksburg, W. Va.	2001	

Mines in Government possession 15 November 1946—Continued

CMA AREA I, DISTRICT #3—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Fairpoint Construction Co., 416 E. Market Street, Cadiz, Ohio.	Bridgeport, Bridgeport, W. Va.	446	R. W. Moore.
Fife Coal Company, 721 College Avenue, Morgantown, W. Va.	Gans, 721 College Ave., Morgantown, W. Va.	2189	Mary N. Fife.
Box Coal Co., Box 353, Morgantown, W. Va. (2200-B).	#3 Morgantown, W. Va.		
Frances Fuel Co., Box 96, Monongah, W. Va.	Frances, Frances, W. Va.	57	R. A. Poland.
Gabbert Coal Co., P. O. Box 441, Morgantown, W. Va.			
Gauley Mountain Coal Co., Ansted, W. Va.	Williams River Mine, Ansted, W. Va.	2067	R. H. Morris.
Gibson Coal Co., R. #1, Watson, W. Va. (2200-B).			
Hall Coal Co., 7 Third Street, Morgantown, W. Va.			
Hallett Coal Co., Shinnston, W. Va.	Scott #3, Shinnston, W. Va.	2045	Byford Goessman.
	Adams #1, New Bethlehem, Pa.		Geo. C. Leonard.
John Huggins & Son, R. F. D. #1, Box 177A, Morgantown, W. Va.			
Hunkin-Conkey Construction Co., (Shoffner, Gorden & Hinman), Box 174, Blairsville, Pa.	Shinn's Run #1, P. O. Box 595, Bridgeport, W. Va.	2133	V. F. Robertson.
	Shinn's Run Coal Project, Willard Tipple, Shinnston, W. Va.		R. L. Riggs.
Hutchison Coal Company, Monroe Street, Fairmont, W. Va. (also in D-8).	McCandlish, Meadowbrook, W. Va.	91	Robert A. Ritchie.
Industrial Coal Co., Kingwood, W. Va. (also in D-9).			
Jamison Coal & Coke Co., 116 North Main St., Greensburg, Pa. (also in D-2).	#9, Farmington, W. Va.	80	Ralph E. Jamison.
	#10, Rachel, W. Va.	122	
Johnstown Coal & Coke Co., 204 Payne Bldg., Charleston, W. Va. (also in D-7).	Crichton #4, Nettie, Nicholas Co., W. Va.	2040	W. H. Crichten.
Katherine Coal Mining Co., 1616 Walnut St., Philadelphia, Pa.	Katherine #3	128	Louis Sitnek.
	Katherine #4 Lumberport, W. Va.	45	
Kelly's Creek Colliery Co., Western Reserve Bldg., Cleveland 13, Ohio (Also in D-8).	Maiden Mine, Maidsville, W. Va.	100	Harry T. Ewig.
Kessler Coal Co., Cowen, W. Va.	#1, Cowen, W. Va.	1404	Clyde D. Kessler.
S. C. & G. D. Klink Coal Co., R. F. D. #2, Morgantown, W. Va.	Eleanor, Everettsville, W. Va.	1343	G. D. Klink.
Lockview Coal Co., Lake Lynn, Pa.	Lockview, Hoard, W. Va.	98	E. C. Stentz.
Louise Coal Co., Box 859, Morgantown, W. Va.	Louise, Osage, W. Va.	96	R. M. Davis.
Marra Coal Co., Browntown, W. Va.	Hartley #1	71	Frank Marra.
	Hartley #2 Browntown, W. Va.		
The Maryland Century Coal Co., 718 Real Estate Trust Bldg., Philadelphia, Pa.	Century #1, Century, W. Va.	35	Charles H. Diffenderffer.
Maureen Coal Co., 140 S. 3rd St., Clarksburg, W. Va.	Cliff Mine, Spelter, W. Va.	36	Paul Allen Hornor.
McCartney Coal Co., Box "A," Mona, W. Va.	Mon-Ark #1	1226	E. D. Gall.
	Mon-Ark #2		
	Mon-Ark #3		
	Mon-Ark #4 Mona, W. Va.		
McCoy Brothers, 1st Nat'l Bank Bldg., Connellsville, Pa.			
Michael Coal Co., Haywood, W. Va.			
Miller-Todd Coal Co., Buckhannon, W. Va.	Ella, Adrian, W. Va.	53	Mycoupe Hymes.
Minds Coal Mining Corp., Ramey, Pa.			
Monongahela Rail & River Coal Corp., Peoples Bldg., Fairmont, W. Va.	Emily, Maidsville, W. Va.	54	H. W. Showalter.
Mount Hope Coal Co., Mount Hope, W. Va.	Cherry River, Holcomb, W. Va.	455	T. H. Snyder.
Mountain Fuel Co., Box 28, Latrobe, Pa.	Glen Cambria, Flemington, W. Va.	62	David E. Adams.
Nicholas-Webster Coal Corp., Tioga, W. Va.	Tioga #5, Tioga, W. Va.	290	Gertrude C. Gellatly.
Oliverio Coal Co., Station "C", Box 27, Clarksburg, W. Va. (2200-B).			

Mines in Government possession 15 November 1946—Continued

CMA AREA I, DISTRICT #3—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Panther Coal Co., Inc., 706 Hartman Bldg., Columbus, Ohio (Also in D-8).	Maryhill #5, Maryhill, W. Va.	2002	W. S. Leckie.
Pardee & Curtin Lumber Co., 521 Goff Bldg., Clarksburg, W. Va.	Bergoo #2	16	G. D. Curtin.
	Bergoo #3	17	
	Bergoo #4	18	
	Bergoo #5	2175	
	Bergoo #6	2176	
	Bergoo, W. Va.		
	Bolair #1, Bolair, W. Va		
	Bolair #2, Bolair, W. Va	682	
	Richter #2 (S), Lost Creek, W. Va.	1296	
Pecks Run Coal Co., Box 905, Buckhannon, W. Va.	Kahe, Pecks Run, W. Va	83	F. E. Williams.
Penn Alpha Coal Co., Box 209, Clarksburg, W. Va.	Alpha, Mt. Clare, W. Va	3	A. R. Hewitt.
R. G. Pier Coal Co., P. O. Box 541, Steubenville, Ohio.	Meadowbrook #1	1269	C. G. Robertson.
	Meadowbrook #2		
	Meadowbrook, W. Va.		
Pittsburgh Consolidation Coal Co., 2000 Koppers Bldg., Pittsburgh 19, Pa. (also in D-1 and D-2). (Now: Consolidation Coal Co. (W. Va.), Fairmont, W. Va.).	Consolidation #25, Clarksburg, W. Va.	37	W. L. Doolittle.
	Consolidation #32, Owings, W. Va.	38	
	Consolidation #38, Fairmont, W. Va.	39	W. L. Doolittle.
	Consolidation #63, Monongah, W. Va.	40	
	Consolidation #68, Jordan, W. Va.	42	
	Consolidation #97, Rivesdale, W. Va.	43	
	Consolidation #9 P. O. Box 197, Enterprise, W. Va.	111	
	Arkwright, P. O. Box 828, Morgantown, W. Va.		
Polino Coal Co., P. O. Box 905, Fairmont, W. Va.			
Preston County Coke Co., Cascade, W. Va.	Cascade	33	A. W. Hawley.
	Hawley #1	72	
	Bull Run	1285	
	Cascade, W. Va.		
W. L. Pursglove Coal Co., Box 246, Clarksburg, W. Va.	Chieftain Tipple	1410	E. E. Criswell.
	Mars Mine		
	Wilsonburg Strip		
	Wilsonburg, W. Va.		
Pursglove Coal Mining Co., Pursglove, W. Va.	#2	120	E. B. Rowe.
	#15	119	
	Pursglove, W. Va.		
Raven Coals, Inc., Beckley, W. Va. (2200-B).			E. S. Pugh.
Regal Coal Co., Flemington, W. Va	Eagle Mine, Hepzibah, W. Va.	51	A. R. Reppert.
Rex Fuel Co., Volga, W. Va	Dayton #1	2087	G. J. Vincent.
	Dayton #2		
	Volga, W. Va.		
Richwood-Sewell Coal Co., 1368 Hanna Bldg. Co., Cleveland, Ohio.	Sewell, P. O. Box "U," Summersville, W. Va.	2086	A. C. Bishop.
River Seam Coal Co., Booth, W. Va	Booth #2, Booth, W. Va	23	Frank Campbell.
Roaring Creek Coal Mining Co., Box 1148, Elkins, W. Va.			
Rodriquez & Son Coal Co., 209 Warley Ave., Clarksburg, W. Va. (2200-B).			
Rosedale Coal Co., Box 676, Morgantown, W. Va.	#1, Maidsville, W. Va	132	T. J. Johnson.
Rose Valley Coal Co., Flemington, W. Va.	Rosemont Mine, Rosemont, W. Va.	133	A. R. Ruppert.
Sewell Coal & Coke Co., U. S. Bank Bldg., Johnstown, Pa.	Royal #4, Curtin, W. Va	2151	Robert P. Reed.
Shinnston Coal Co., Box "P", Shinnston, W. Va.	Hood Mine, Shinnston, W. Va.	161	E. P. Brennan.
Silvester Brothers, Box 903, Elkins, W. Va.	Silvester, Elkins, W. Va		A. M. Silvester.
Simpson Creek Collieries Co., Inc., 124 Wall Street, New York 5, N. Y.	Galloway #2	59	David W. Jones.
	Galloway #3	157	
	Galloway, W. Va.		

Mines in Government possession 15 November 1946—Continued

CMA AREA I, DISTRICT #3—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
South Union Coal Co., 116 N. Main Street, Greensburg, Pa.	#11, Edna, W. Va.	52	J. C. Jamison.
Steorts & Cofer Coal Co., Mt. Clare, W. Va.	Quinn #3 Ronay #8 Mt. Clare, W. Va.	2057	W. E. Steorts.
Stevens & Sons, R. F. D. #1, Watson, W. Va.	Shinn, Shinnston, W. Va.	425	D. W. Stevens.
Stewart Coal Co., Box 386, Morgantown, W. Va.			
Stoetzer Coal Co., 208 Newton St., Fairmont, W. Va.	Robert Mine, Shinnston, W. Va.	129	John J. B. Stoetzer.
Sunnyhill Mining Co., 3090 W. Liberty Ave., Pittsburgh 16, Pa.	#6 #6B Reedsville, W. Va.	2079 2220	C. H. Snyder.
B. H. Swaney, Inc., 702 Union Bank Bldg., Clarksburg, W. Va. (2200-B). (Contractor For: W. L. Pursglove Coal Co.)	Chieftain, Wilsonburg, W. Va.		B. N. Swaney.
Three Fork Coal Co., Ellamore, W. Va.	Cassity #2 Cassity #3 Cassity #4 Cassity #5 Cassity, W. Va.	34 428 2098	Wm. B. Moore.
Tioga Coal Corp., Tioga, W. Va.	#1 Tioga, W. Va.	173	Thomas T. Rees.
Virginia & Pittsburgh Coal & Coke Co., Box 1307, Fairmont, W. Va.	Kingmont Mine, Kingmont, W. Va. Morgan Mine, Morgan, W. Va.	85 108	R. M. Hite.
Waddell Fuel Co., P. O. Box 335, Philippi, W. Va.	Delmar #1, Flemington, W. Va.	48	John R. Waddell.
Walker Coal Mng. Co., Box 926, Wilkins, W. Va.	Big Sewell #2, Bemis, W. Va.	1272	L. J. Fimm.
Wendel Coal Co., Wendel, W. Va.	#2 #3 #4 Wendel, W. Va.	145	G. Bailey.
West Fork Collieries, Inc., 1116 Morgantown Ave., Fairmont, W. Va.	#4, Rt. 2, Shinnston, W. Va.	465	O. J. Vincent.
West Virginia Coal & Coke Co., 705 Atlas Bank Building, Cincinnati, Ohio (also in D-8).	Norton Mine, Norton, W. Va.	112	Charles Dauance.
Phil Williams Coal Co., P. O. Box 846, Elkins, W. Va.			
Cecil Wilson Coal Co., Box G, Shinnston, W. Va.	Wilson, Flemington, W. Va.	2096	Cecil Wilson.
Wilson & Ingram Construction Co., St. Marys, W. Va. (2200-B).			
Woolridge Coal Mng. Co., Trust Bldg., Clearfield, Pa.	Sewell Chief Mine, Richwood, W. Va.	2010	H. D. Woolridge.
Young Coal Co. (Clayton G. Young), Nutter Fort, W. Va.			

CMA AREA I, DISTRICT #4

A. & A. Coal Company, P. O. Box 216, New Lexington, Ohio.	A. & A. #6 Mine, New Lexington, Ohio.	4153	Glenn A. Akenhead.
Amesville Coal Co., Amesville, Ohio (2200-B).			
Beaber Coal Co., 763 2nd St SE. New Philadelphia, Ohio.	Beaber, R. D. #3, Dover, Ohio.	2018	D. O. Beaber.
Black Arrow Mining Co., 145 N. High Street, Columbus 15, Ohio.			
J. L. Boots Co., 297 S. High St., Columbus, 15, Ohio.	Boots #1, Saltillo, Ohio		Carl Lippets.
Brentwood Coal Co., Inc., Albert Felix, President, 2375 Valera Ave., Pittsburgh 10, Pa. (2200-B).			
Brownfield Coal Co., 79 E. State St., New Lexington, Ohio.	#1, Moxahala, Ohio	3126	C. W. Brownfield.
Brownfield & Kokensparger, West Lafayette, Ohio.			
Buckeye Coal Co., R. F. D. #2, Cambridge, Ohio.			

Mines in Government possession 15 November 1946—Continued

CMA AREA 1, DISTRICT #4—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Buckingham Coal Co., Congo, Ohio	#219, Congo, Ohio	27	Harry K. Park.
Cambria Mining Co., 616 Ohio Bank Building, Toledo, Ohio.	Webb Mine #1, Bellaire, Ohio	152	George M. Jones, Jr.
Carbondale Coal Co., Nelsonville, Ohio.			
Nick Cenci & Son, 1183 Essex Street, Columbus, Ohio.	Cena #1, Shawnee, Ohio	4023	D. F. Cenci.
Centertown Coal Co., Box 208, Barnesville, Ohio.			
Central States Construction Co., P. O. Box 149, Logan, Ohio.	#1	4058	R. N. McGiffert.
	#2	4136	
	Box 149, Logan, Ohio		
Clean Coal Co., R. D. #1, Martins Ferry, Ohio.	Nixon, Martins Ferry, Ohio	2185	P. R. Funari.
Clearfield Bit. Coal Corp., 1606 1st Nat'l Bank Bldg., Pittsburgh, Pa.	Apex Mine, Lansdale, Ohio	7	James F. Hillman.
Commercial Fuel Co., 313 Globe Bldg., Pittsburg, Kansas.			John I. Clemens.
Consolidated Fuel Co., Cadiz, Ohio			
Coonsville Mining Co., P. O. Box 149, Logan, Ohio.	#1, Logan, Ohio	4208	R. N. McGiffert.
Crescent Valley Mining Corp., 1208 Hanna Bldg., Cleveland 15, Ohio.	June #1, Holloway, Ohio	3161	A. C. DeWitt.
Cross Creek Coal Co., 713 Grant Bldg., Pittsburgh, Pa.			
Dodig Coal & Mtg. Co., P. O. Box 135, Steubenville, Ohio.	Dodig #2, R. D. #3, Steubenville, Ohio.	623	M. S. Dodig.
			Oral Daugherty.
Dry Dock Coal Co., Nelsonville, Ohio			
Joe Dudek Coal Mining Co., R. F. D. #1, Box 191-A, St. Clairsville, Ohio.	#2, St. Clairsville, Ohio	4237	Joe Dudek.
Fairview Coal Mining Co., Short Creek, Ohio.	Fairview, Short Creek, Ohio	1902	Anthony D. Zitko.
Florence Coal Co., 570 Union Commerce Bldg., Cleveland, Ohio.	Florence, Piney Fork, Jefferson Co., Ohio.	54	Whitney Warner, Jr.
Garaux Bros. Co., 415 9th St. SW., Canton, Ohio.			
S. A. Gardetto, Inc., 31 Milk Street, Boston, Mass.			
Globe Iron Co., Main & South Sts., Jackson, Ohio.	Globe, Jackson, Ohio	58	Edwin A. Jones.
Gorsuch & Woods Coal Co., Fazeningdale, Ohio.	Dyer #1, Hopedale, Ohio	45	John S. Gorsuch.
Hanna Coal Co., St. Clairsville, Ohio.	Willow Grove #10, Neffs, Ohio.	157	James Hyslop.
	Dun Glen #11, Dun Glen, Ohio.	43	
	Georgetown #12	163	
	Duncanwood	409	
	Adena, Ohio.		
Harrisburg Coal Co., W. Kentucky Ave., Sebring, Ohio.			
Healey Bros. & Co., Flushing, Ohio	Rice Bros. #1, Flushing, Ohio	408	J. R. Healey.
Hendershot & Wimer, Clarendon Hotel, St. Clairsville, Ohio.	Godoway #2 Strip, P. O. Box 177, St. Clairsville, Ohio.	4198	Robert V. Wimer.
Hickory Coal Co., R. F. D. #1, New Philadelphia, Ohio (2300 B).			
Hi Heat Coal Company, 1027 Roosevelt Avenue, Massillon, Ohio.	Camp Creek, Camp Creek, Ohio.	3067	George M. Hill.
Hocking Valley Mining Co., 16 E. Broad Street, Columbus, Ohio.	Eclipse	47	S. Cottingham.
	Lost Run	86	
	Nelsonville, Ohio.		
Imperial Coal Co., Box 323, Adena, Ohio.	Howard, Adena, Ohio	4150	Angelo Franciose.
Indian Run Coal Co., R. F. D. #3, Bellaire, Ohio.	Indian Run #1 Bellaire, Ohio	368	Domenic Santaviera
Island Creek Mining Co., R. D. #1, Toronto, Ohio.			
Jackson Iron & Steel Co., Jackson, Ohio.	#1 Route #2, Jackson, Ohio	72	H. R. Shick.
	Strip Mine, Liberty Twp., Jackson, Ohio.		
Jefferson Coal Co., 1360 Leader Bldg., Cleveland, Ohio.	Piney Fork #1	107	James Hyslop.
	Piney Fork #4	176	
	Piney Fork, Ohio.		
	Crow Hollow #3	3132	
	Crow Hollow #5	4161	
	Crow Hollow #6	4202	
	Smithfield, Ohio.		

Mines in Government possession 15 November 1946—Continued

CMA AREA I, DISTRICT #4—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Jefferson Company, 1425 Terminal Tower Bldg., Cleveland, Ohio.	Betsy, Smithfield, Ohio	16	H. G. Schmidt.
	Sydney, Fernwood, Ohio	313	
Jones Motor Sales, Inc., Zanesville, Ohio (also known as Muskingum Coal Co.).			
Kenwood Mining Company, 416 E. Market Street, Cadiz, Ohio (2200-B).	Kenwood, Cadiz, Ohio		R. W. Moore.
L. & M. Coal Co., Nelsonville, Ohio (2200-B).	L. & M., Nelsonville, Ohio	4001	L. B. Light.
Lorain Coal & Dock Co., 33 N. High St., Columbus, 15, Ohio.	Blaine, Blaine, Belmont Co., Ohio.	21	S. B. Johnson.
M. C. & S. Coal & Mng. Co., 436 2nd St., N. W., New Philadelphia, Ohio.			
McVey-Rosser Coal Co., 6½ W. Columbia Street, Nelsonville, Ohio.	#1, Nelsonville, Ohio	2053	E. M. McVey.
Midvale Coal Company, Midvale, Ohio.	#7, Midvale, Ohio	455	R. W. Rutledge.
Mine Five Murray Co., Athens, Ohio.			
Menace Coal Mining Co., Lafferty, Ohio.	Virginia Hill	147	Oliver Monace.
	Liberty	4024	
	Junior	4086	
	Lafferty, Ohio.		
Mystic Mines, P. O. Box 68, New Lexington, Ohio (2200-B).			
New York Coal Company, 150 E. Broad Street, Columbus, Ohio.	#52	91	Edwin H. Davis.
	#25	90	
	Nelsonville, Ohio.		
Nole & Steele Coal Co., Fairpoint, Ohio (2200-B).			
Northland Fuel Co., F. W. Hoffman, Gen. Mgr., 44 E. Broad Street, Columbus 5, Ohio.	Giblaw, Shawnee, Ohio	197	F. W. Hoffman.
David Z. Norton Co., 1208 Hanna Bldg., Cleveland, Ohio.	#2, Crescent, Ohio	4081	R. C. Norton.
Patty Coal Mine, Virginia Street, Martins Ferry, Ohio.	Patty, Martins Ferry, Ohio	504	T. E. Ayers.
Port Washington Coal Co., Port Washington, Ohio.	#1, Newcomerstown, Ohio	4166	James L. Ward.
Powhatan Mining Co., 1425 Terminal Tower, Cleveland, Ohio.	#1	111	H. G. Schmidt.
	#2	115	
	Powhatan Point, Ohio.		
	Fulton, Jewitt, Ohio	2936	
Pugh & Tiller, Lancaster, Ohio (2200-B).			
Rail & River Coal Co., 804 First Nat'l. Bank Bldg., Bellaire, Ohio.	#3	114	John T. Sydnor.
	#6	116	
	Bellaire, Ohio.		
Rayland Coal Co., 215 E. Main Street, St. Clairsville, Ohio.	#3, Georgetown, Hamsen Co., Ohio.	4158	D. M. Ryan.
Rend-Mar Coal Co., P. O. Box 415, Corning, Ohio.	#9, Corning, Ohio	138	Vincent M. Casey.
	#15, Hemlock, Ohio	64	
	Black Diamond, Lathrop, Ohio.	4124	
	#10, Carrington, Ohio	4174	
	Buchtel, Buchtel, Ohio		
Rose Hill Coal Co., 17 South High Street, Huntington Bank Bldg., Columbus, Ohio.	Rose Glow	185	J. S. McVey.
	Black Arrow	4094	
	Roseville, Ohio.		
Rush Run Coal Co., P. O. Box 13, Bellaire, Ohio.	Nardo, Schick Siding, Bellaire, Ohio.	4146	Bernard F. Pim.
Scott Coal Co., 813 N. Dawson St., Uhrichsville, Ohio.			
Sebring Coal Co., West Kentucky Ave., Sebring, Ohio.			James Palermo.
Seneca Coal Co., 106 N. Main St., Akron, Ohio.	Rigby, Senecaville, Guernsey Co., Ohio.	121	J. H. Miles.
Sherrick Coal Co. (W. F. Sherrick, Jr.), R. F. D. #2, New Lexington, Ohio.	Sherrick #2, McCluney, Ohio	420	W. F. Sherrick, Jr.
Sidwell Brothers, Deavertown, Ohio.	Sidwell, Shawnee, Ohio	3160	T. K. Sidwell.
Starr-Jackson Mining Co., 17 South High Street, Brunson Bldg., Columbus, Ohio.	Starr Mine, New Plymouth, Ohio.	130	J. S. McVey.
Steubenville Coal & Mng. Co., P. O. Box 511, 122 Liberty Street, Steubenville, Ohio.	High Shaft, Steubenville, Ohio.	65	John J. Sherrard.
Steubenville Deep Shaft Coal Co., Box 329, Steubenville, Ohio.			

Mines in Government possession 15 November 1946—Continued

CMA AREA I, DISTRICT #4—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Stillwater Clay Products Co., 3334 Prospect Ave., Cleveland, Ohio.	Stillwater, Mill Twp., Tuscarawas Co., Ohio.	1881	J. V. Duffy.
Tasa Coal Co., First National Bank Bldg., Zelienople, Pa.	Goff		H. B. Salkeld.
	Tasa #7	2062	
	Millie #1	2100	
	Millie #2	2184	
	Harrison Co., Lost Creek, Ohio.		
	Freemont, R. #2, Cadiz, Ohio	122	
	Cain #3, Grafton, W. Va	2141	
Ten X Coal Co., Route #2, Roseville, Ohio.	#2, Roseville, Ohio	2439	Walter V. Beisser.
Teramana Bros. Coal Co., 236 Sixth Street, Steubenville, Ohio.			Dan Teramana.
J. G. Thoma Coal Co., Route #3, Minerva, Ohio.	Thoma, Minerva, Ohio	1355	Jacob G. Thoma.
Thorn Hill Coal Co., 167 Fort Street, Nelsonville, Ohio.	Thorn Hill, McCuneville, Ohio.	146	Thomas F. Riley.
Tunnel Mill Mining Co., Route #1, Bergholz, Ohio.			
Universal Sewer Pipe Corp., 1300 Union Commerce Bldg., Cleveland 14, Ohio.	Universal, Chrichsville, Ohio	3135	S. O. McFall.
Paul Varga & Sons, 1385 Norton Rd., Columbus 8, Ohio (230-B).	Fairpoint, Fairpoint, Ohio		William Varga.
Wainwright Coal Co., Wainwright, Ohio.			
Warner Collieries, 570 Union Commerce Bldg., Cleveland, Ohio (also in D-8).	Wolf Run, Wolf Run, Jefferson Co., Ohio.	158	E. L. Thrower.
	Camel Run, Fairpoint, Belmont Co., Ohio.	30	
Wheeling Township Coal Mng. Co., 1144 E. Market Street, Akron 16, Ohio.	#2, Akron, Ohio	154	C. S. Cisser.
Wilhelm Coal Co., 153 Park Drive, St. Clairsville, Ohio.	Fairpoint, Fairpoint, Ohio	4250	R. L. Wilhelm.
F. H. Wolfe Coal Co., Inc., R. F. D. #3, Nelsonville, Ohio.			
Yost Mines, P. O. Box 28, Logan, Ohio	#2, Haydenville, Ohio	4200	Ralph Yost.
Youghiogheny & Ohio Coal Co., 330 Hanna Bldg., Cleveland, Ohio (also in D-8).	Nelms, Cadiz, Ohio	99	W. M. Osborne.
	Dorothy, Glen Robbins, Ohio.	42	
	Florence, Martins Ferry, Ohio.	55	
	Barton, Barton, Ohio	10	
Youngstown Sheet & Tube Co., 1209 Stambaugh Bldg., Youngstown 1, Ohio.	Elk Run Strip Mine, Lisbon, Ohio.	1448	S. L. Mautho.

CMA AREA I, DISTRICT #6

Boggs Run Mining Co., Route #2, Wheeling, W. Va.	Boggs, Wheeling, W. Va	6	Dragan Duranovich.
Buday Coal Co., Wellsburg, W. Va	Walnut Grove, McKinleyville, W. Va.	108	Matt Buday.
Castle Shannon Coal Corp., Wabash Bldg., Pittsburgh, Pa. (also in D-1 and D-2).	Rockdale #4, Follansbee, W. Va.	6004	J. C. Forrest, Jr.
Clean Coal Co., Edgington Lane, Wheeling, W. Va.	Storch, Wheeling, W. Va	11	M. F. Bennett.
Costanzo Coal Mining Co., P. O. Box 310, Wheeling, W. Va.	Richland	19	Frank Costanzo.
	Costanzo, Wheeling, W. Va	8	
	Denvenny #2, Beech Bottom, W. Va.	31	
Glendale Gas Coal Co., 100 Western Reserve Bldg., Cleveland 13, Ohio.	Alexander, Moundsville, W. Va.	1	Gordon Wilcox.
Hitchman Coal & Coke Co., Marshall Street, Benwood, W. Va.	Hitchman, Benwood, W. Va	14	Louis J. Yaeger.
Lombardi Bros. Coal Co., 352 Main Street, Follansbee, W. Va.	Standard #1, Bethany Pike, W. Va.	208	John Lombardi.
Ollett Coal Co., Box 311, Bridgeville, Pa.			
P. V. & K. Coal Co., Main Street, Monongahela, Pa. (also in D-8).	Bethany Mine, Bethany, W. Va.	5	Robert H. Robinson.

Mines in Government possession 15 November 1946—Continued

CMA AREA I, DISTRICT 6—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Valley Camp Coal Co., Western Reserve Bldg., Cleveland, Ohio.	#1, Elm Grove, W. Va #3, Valley Camp, W. Va #5, Elm Grove, W. Va	18 9	Harry T. Ewig.
West Virginia Pittsburgh Coal Co., 1020 Guardian Bldg., Cleveland 14, Ohio.	Locust Grove, Collier, W. Va	15	A. W. Dean.
Wheeling Steel Corp., 1134 Market Street, Wheeling, W. Va.	Beech Bottom, Beech Bottom, W. Va.	3	G. W. Hewitt.
Windsor Power House Coal Co., 14 Wood Street, Pittsburgh 30, Pa.	Beech Bottom, Windsor Heights, W. Va.	4	A. N. Cartwright.

CMA AREA II, DISTRICT 2

Alaska Coal Co., Laurel Creek, W. Va.	Alaska Mine, Beelick Knob, W. Va.	1000	Owen W. Cox.
Algoma Coal & Coke Co., Algoma, W. Va.	Algoma, Algoma, W. Va.	2	Wm. Beury.
American Coal Co., of Allegany County, McComas, W. Va.			John J. Atwater.
Ames Mining Co., Box 831, Charleston, W. Va. (also in D-8).	Ames, Fayette, W. Va.	728	D. H. Morton.
Arrow Builders Inc., Quinwood, W. Va.			
Ashland Coal & Coke Co., 708 Perry Building, Bluefield, W. Va.	Ashland #6 & #9, Ashland, W. Va.	9	W. W. Walker.
Atlantic Smokeless Coal Co., Asco, West Virginia.	Asco #1, Asco, W. Va Asco #2, Asco, W. Va	8 220	G. W. Yaeger.
Babcock Coal & Coke Co., 906 Frick Bldg., Pittsburgh, Pa.	Babcock #7, Clifftop, W. Va	12	John K. Saxmon, Jr.
Beech Knob Coal Co., Clearco, W. Va.	Beech Knob, Clearco, W. Va	717	E. L. Roder.
Bellemead Coal Co., Sabine, West Virginia.			
Carlo Bianchi & Co., Inc., 24 Union Ave., Framingham, Mass.	Bianchi #2, Helen, W. Va	1077 3019	Peter M. Bianchi.
Big Eagle Coal Co. Inc., P. O. Box 1069, Beckley, W. Va.	Big Eagle, Mayne, W. Va	1031	George O. Mills.
Bill Branch Coal Co., Mullens, W. Va.	Bill Branch, Mullens, W. Va	1068	R. D. Platt.
Black Eagle Smokeless Coal Co., Box 368, Mullens, W. Va.			
Brackens Creek Fuel Co., Lookout, W. Va.			
Branch Coal & Coke Co., Laurel Creek, W. Va.	Elverton, Elverton, W. Va.	29	Owen W. Cox.
Brule Smokeless Coal Co., 1208 Hanna Bldg., Cleveland 15, Ohio.	#2 Otsego, W. Va #3, Otsego, W. Va	32 1048	Crispin Ogiebay.
Buckeye Coal & Coke Co., Stephenson, W. Va.	Buckeye #2, Freeman, W. Va Buckeye #3, Stephenson, W. Va.	34 35	Walter G. Stephenson.
Carter Coal Co., 630 Fifth Ave., New York 20, N. Y. (2300½)	Olga #1, Coalwood, W. Va Olga #2, Caretta, W. Va Caretta, Caretta, W. Va	133 134 37	James Walter Carter.
Charleston Coal Company, 505 United Carbon Bldg., Charleston 1, W. Va.	Cleve, Cleve, W. Va.	335	H. P. Rhinehart.
Clear Creek Coal Co., Clearco, W. Va.	Brooke Mine, Clearco, W. Va.	30	Gory Hogg.
Coney Island Coal Co., No. 2, Welch, W. Va.	Coney Island Coal Co., #2, Welch, W. Va.	726	J. N. Holly.
Crozer Coal & Coke Co., 1510 Chestnut St., Philadelphia, Pa.	Crozer, Elkhorn, W. Va	49	Edward C. Page.
Crozer Land Association, 1510 Chestnut St., Philadelphia, Pa.	Charmco #2 Rainelle, W. Va	271	Edward C. Page.
Crystal Coal & Coke Co., Branwell, W. Va.	Crystal Coal & Coke Co., Crystal, W. Va.	50	John J. Fox.
Darr Smokeless Coal Co., Asco, W. Va.	Twin Branch, Twin Branch, W. Va. Asco #3, Twin Branch, W. Va.	1047 237	R. E. Brockman.
Deepwater Coal Co., Crown Hill, W. Va.	Deepwater #1, Crown Hill, W. Va.	295	E. L. Michie.
Douglas Pocahontas Coal Co., Iaeger, W. Va.			

Mines in Government possession 15 November 1946—Continued

CMA AREA II, DISTRICT #7—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Eastern Gas & Fuel Associates (Koppers Coal Div.), Koppers Bldg., Pittsburgh 19, Pa. (also in D-1, D-2, D-4 and D-8)	Powellton #8, Powellton, W. Va.	1062	L. C. Campbell
	Powellton #2 Gas, Powellton, W. Va.		
	Beards Fork #2 Gas, Beards Fork, W. Va.		
	Beards Fork Little Eagle, Beards Fork, W. Va.		
	Midvale, Gamcoa, W. Va.		
	Carswell, Kimball, W. Va.	38	
	Keystone, Keystone, W. Va.	93	
	Maitland, Maitland, W. Va.	114	
	Helen #9, Helen, W. Va.	79	
	Long Branch, Long Branch, W. Va.		
	Stotesbury #8, Stotesbury, W. Va.	178	
	Stotesbury #11, Helen, W. Va.	238	
	Eccles #5, Eccles, W. Va.	62	
	Eccles #5, Eccles, W. Va.	63	
Edmor Coal Co., Welch, W. Va.	Edmor Coal Co., Northfork, W. Va.	323	T. W. Edwards.
Edmor Pocahontas Coal Co., Welch, W. Va.	Edmor Pocahontas Coal Co., Freeman, W. Va.	1054	T. W. Edwards.
Fire Creek Fuel Co., Box 9, Beckley, W. Va.	Hunter #2, Jonben, W. Va.	84	Hunter Smith.
Gaston Coal Co., Alpoca, W. Va.			S. Austin Caperton.
Gauley Mountain Coal Co., Ansted, W. Va.	Ansted Mine, Ansted, W. Va.	5	R. H. Morris.
	Rich Creek #1, Ansted, W. Va.	337	
	Rich Creek #3, Ansted, W. Va.	338	
Gilliam Coal & Coke Co., Gilliam, W. Va.	Gilliam Coal & Coke Co., Gilliam, W. Va.		H. A. Henthorn.
Greenbrier Smokeless Coal Co. Cinderella, W. Va.	Laurel Creek, Charmco, W. Va.	219	C. A. Hamil.
Greenwood Coal Co., Laurel Creek, W. Va.	Greenwood, Lawton, W. Va.	76	L. Lawton.
Gulf Mining Co., Mount Hope, W. Va.	Crab Orchard, Crab Orchard, W. Va.	44	P. [illegible] Graney.
Gulf Smokeless Coal Co., Tams, W. Va.	Tams #1, Tams, W. Va.	181	W. P. Tams.
	Tams #2, Tams, W. Va.	245	
	Wyco #207½, Wyco, W. Va.		
Hayes Baker Coal Co., 405 Summers Street, Beckley, W. Va.			
Hood Coal Co., Laurel Creek, W. Va.	Fayette, Fayette, W. Va.	236	Owen W. Cox.
Iaeger Pocahontas Coal Co., Iaeger, W. Va.	Iaeger Pocahontas Coal Co., Iaeger, W. Va.	267	William Severt.
Imperial Smokeless Coal Co., Box 192, Welch, W. Va.	Imperial #1, Quinwood, W. Va.		J. W. Strickler.
	Imperial #2, Quinwood, W. Va.	322	
Indian Pocahontas Coal Co., Iaeger, W. Va.	Indian Pocahontas Coal Co., Iaeger, W. Va.	328	J. B. Crozier.
Jacobs Fork Pocahontas Coal Co., Welch, W. Va.	Jacobs Fork, Squire, W. Va.	89	J. W. Strickler.
Jean Pocahontas Coal Co., Box 233, Bluefield, W. Va.	Jean, Warriormine, W. Va.	64	W. T. Williams, Jr.
	Pioneer, Warriormine, W. Va.	[illegible]	
Jewell Ridge Coal Corp., Tazewell, Va.	Jewell Ridge #1, Jewell Ridge, Va.	90	J. P. Horne.
	Jewell Valley #2, Jewell Valley, Va.	91	
Johnstown Coal & Coke Co., 204-5 Payne Bldg., Charleston, W. Va. (also in D-3).	Crichton #1, Chrichton, W. Va.	47	Andrew P. Crichton.
	Crichton #2, Bellburn, W. Va.	48	
Kingston Pocahontas Coal Co., Inc., 40 Rector St., New York, N. Y. (also in D-8).	Exeter, Hemphill, W. Va.	68	A. E. Scherm.
	Warwick, Hemphill, W. Va.	200	
Lake Superior Coal Co., Cannelton, W. Va.	#3, Superior, W. Va.	95	F. O. Harris.
	#4, Superior, W. Va.	96	
Lamar Colliery Co., Commercial Bank Bldg., Bluefield, W. Va.	Lamar, Lamar, W. Va.	97	E. E. Jones.
Lanark Coals, Inc., Box 152, Mt. Hope, W. Va.			B. A. Lantzy.

Mines in Government possession 15 November 1946—Continued

CMA AREA II, DISTRICT #7—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Laurel Creek Coal Co., Laurel Creek, W. Va.	Laurel, Laurel Creek, W. Va	99	Owen W. Cox.
Laurel Smokeless Coal Co., Laurel Creek, W. Va.	Hemlock, Kathryn, W. Va	80	Owen W. Cox.
Leecony Smokeless Coal Co., Besoco, W. Va.	Besoco, Besoco, W. Va	21	H. E. Moran.
Leckie Fire Creek Coal Co., 79 East State St., Columbus, Ohio.	Fireco #2, Fireco, W. Va		W. S. Leckie.
	Fireco #4, Fireco, W. Va		
Leckie Smokeless Coal Co., 79 East State Street, Columbus, Ohio.	Anjean #1, Anjean, W. Va	4	W. S. Leckie.
	Anjean #3, Anjean, W. Va	1010	
Lillybrook Coal Co., Beckley, W. Va.	#3, Lillybrook, W. Va	103	J. W. Allstock.
	Killarney, Killarney, W. Va	94	
	Affinity, Affinity, W. Va	139	
	Big Stick, McAlpin, W. Va	22	
	Big Stick #2, Abney, W. Va	1052	
Low Ash Mining Co., Inc., Rainelle, W. Va.	Green Siding, Rainelle, W. Va.	75	C. S. Thomas.
MacAlpin Coal Co., 1409 K. V. Bldg., Charleston, W. Va.	MacAlpin #2, MacAlpin, W. Va.	112	D. W. Martin.
Margarette Coal Corp., 31 St. James Avenue, Boston, Mass.	Margarette Coal Corp., Marfrance, W. Va.	115	W. E. Sellards.
Marianna Smokeless Coal Co., Guaranty Bank Building, Huntington, W. Va.	Marianna #1, Marianna, W. Va.	266	W. A. Haslam.
	Marianna #2, Marianna, W. Va.	223	
Mary Frances Coal Co., Ingram Branch, W. Va.			
Maryland Fire Creek Coal Co., 718 Real Estate Trust Bldg., Philadelphia 7, Pa.	Dunedin, Terry, W. Va	59	J. W. Garvey.
Maryland New River Coal Co. 718 Real Estate Trust Bldg., Philadelphia, Pa.	Dubree #1, Rothwell, W. Va	55	J. W. Garvey.
	Dubree #2, Rothwell, W. Va	56	
	Dubree #3, Boone, W. Va	57	
	Dubree #4, Nuttall, W. Va	58	
	Dubree #5, Lynch, W. Va	184	
	Dubree #7, Rothwell, W. Va	1015	
C. H. Mead Coal Co., 1423 Terminal Tower, Cleveland, Ohio.	#2, East Gulf, W. Va	117	H. G. Schmidt.
	#3, East Gulf, W. Va	118	
	#6, East Gulf, W. Va	240	
E. W. Meadows Coal Co., 315 Burgess Street, Beckley, W. Va.	Meadows, Fireco, W. Va	320	E. W. Meadows.
Mill Creek Coal & Coke Co., Coopers, W. Va.			John J. Atwater.
Mill Creek Colliery Co., Ansted, W. Va.			A. R. Russell.
Minter, E. C. Coal Co., Beckley, W. Va.	Minter #126, Rhodell, W. Va		E. C. Minter.
	Amigo #1, Amigo, W. Va		
Mullens Smokeless Coal Co., Mullens, W. Va.	Mullens, Mullens, W. Va	210	H. N. Meade.
New River Company, Mount Hope, W. Va.	Lochgelly, Mount Hope, W. Va.	105	J. M. McCauley.
	Summerlee, Mount Hope, W. Va.	179	
	Oakwood, Mount Hope, W. Va.	132	
	Whipple, Mount Hope, W. Va.	202	
	Collins, Mount Hope, W. Va	1002	
	Garden Ground, Mount Hope, W. Va.	1060	
	Oswald, Mount Hope, W. Va.	135	
	Cranberry, Mount Hope, W. Va.	45	
	Skelton, Mount Hope, W. Va.	165	
	Sprague, Mount Hope, W. Va.	170	
	Stanford, Mount Hope, W. Va.	172	
New River Smokeless Coal Co., Oak Hill, W. Va.	New River Smokeless Coal Co., Oak Hill, W. Va.		W. P. Anderson.

Mines in Government possession 15 November 1946—Continued

CMA AREA II, DISTRICT #7—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
New River & Pocahontas Consolidated Coal Co., 1130 Commercial Trust Bldg., Philadelphia 2, Pa.	Berwind #1, Berwind, W. Va	17	Charles E. Dunlap.
	Berwind #5, Berwind, W. Va	18	
	Berwind #9, Havaco, W. Va	19	
	Berwind #11, Caples, W. Va	20	
	Minden #3, Minden, W. Va		
	Minden #4, Minden, W. Va		
	Layland, Layland, W. Va	100	
	Leslie, Leslie, W. Va	101	
	Kaymoore, Kaymoor, W. Va	92	
North Pole Coal Co., P. O. Box 242, Arlington, Va.	North Pole Coal Co., Asco, W. Va.	540	O. W. Yeager.
Page Coal & Coke Co., 1510 Chestnut Street, Philadelphia, Pa.	Page, Pageton, W. Va	136	L. Rodman Page.
Page Mining Co., 3412 Carew Tower, Cincinnati, Ohio.			
Pando Coal Co., Box 134, Welch, W. Va.	Pando #7, Welch, W. Va	1001	W. B. Swope.
Peabody Coal Co., 231 S. La Salle St., Chicago 4, Ill. (also in D-10).	#71, Bellwood, W. Va	16	S. Peabody, Jr.
Peerless Coal & Coke Co., Vivian, W. Va.	Peerless #3, Vivian, W. Va	137	Roland C. Luther.
	Peerless #4, Vivian, W. Va	248	
Perry Coal Co., Box 1403, Mullens, W. Va.			
Pocahontas Corporation, Room 1010, #1 Broadway, New York, N. Y.	Bottom Creek, Vivian, W. Va.	27	O. L. Alexander.
	Pocahontas #31, Amonate, Va.	144	
	Pocahontas #32, Amonate, Va.	145	
	Pocahontas #33, Bishop, Va.	146	
Pocahontas Fuel Co., Inc., Room 1010 #1 Broadway, New York, N. Y.	Norfolk Angle, Elkhorn, W. Va.	130	O. L. Alexander.
	Boissevain, Boissevain, Va	26	
	Pocahontas #7, Jenkinjones, W. Va.	143	
	Pocahontas #8, Pageton, W. Va.	309	
	Pocahontas, Pocahontas, Va.	142	
	Rolfe, Crumpler (Worth), W. Va.	160	
	Sagamore, McComas, W. Va.	162	
Pond Creek Pocahontas Co., Guaranty Bank Bldg., Bartley, W. Va.	Pond Creek #2, Bartley, W. Va.	147	C. E. Walker.
	Pond Creek #3, Bartley, W. Va.	148	
	Pond Creek #4, Bartley, W. Va.	149	
Premier Pocahontas Collieries Co., 800 Perry Bldg., Bluefield, W. Va.			L. C. Tierney.
Raine Lumber & Coal Co., Duo, W. Va.	Duo, Duo, W. Va	61	J. W. Raine.
Raleigh Coal & Coke Co., Raleigh, W. Va.			R. J. Burnmeister.
Raleigh-Wyoming Mining Co., 230 South Clark St., Chicago, Ill. (also in D-8).	Glen Rogers, Glen Rogers, W. Va.		D. W. Buchanan.
Red Jacket Coal Corp., Red Jacket, W. Va. (also in D-8).	Wyoming, Wyoming, W. Va.	208	Paul P. Ritter.
Rupert Smokeless Coal Co., Rupert, W. Va.			
Scotia Coal & Coke Co., Slab Fork, W. Va.			S. Austin Caperton
Shockley Creek Coal Co., Raleigh County Bank Bldg., Beckley, W. Va.	Semoco, Eccles, W. Va.	164	E. C. Minter.
George H. Siems & Co., Mt. Hope, W. Va.			
Slab Fork Coal Co., Slab Fork, W. Va.			S. Austin Caperton.
Southern Coal Corp., Box 448, Bluefield, W. Va.	Bradshaw Mine, Bradshaw, W. Va.	28	J. I. Clingenpeel.
South Side Company, Caperton, W. Va.			S. Austin Caperton.
Spice Pocahontas Coal Co., Box 350, Welch, W. Va.	Keesee, Welch, W. Va.		F. G. Keesee.
Standard Fire Creek Coal Co., Box 9, Beckley, W. Va.	Beelick Knob 217, Beelick Knob, W. Va.	217	Hunter Smith.
Standard Ore & Alloys Corp., 120 Wall Street, New York, N. Y.	Clearco, Clearco, W. Va.	1083	K. M. Quigley.
Sterling Smokeless Coal Co., Mount Hope, W. Va.	Sterling, Whitby, W. Va.	173	F. H. Snyder.

Mines in Government possession 15 November 1946—Continued

CMA AREA II, DISTRICT #7—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Turkey Gap Coal & Coke Co., Dott, W. Va.	Wenonah-Modoc Mines, Dott, W. Va.	201	J. A. McQuail.
United Pocahontas Coal Co., Crumpler, W. Va.			J. Kirl Renner.
U. S. Coal & Coke Co., 1315 Frick Bldg., Pittsburgh 30, Pa. (also in D-8 and D-10).	#2 Gary, Alpheus, W. Va.	186	Harry M. Moses.
	#3 Gary, Gary, W. Va.	187	
	#6 Gary, Ream, W. Va.	190	
	#7 Gary, Elbert, W. Va.	191	
	#9 Gary, Filbert, W. Va.	193	
	#10 Gary, Venus, W. Va.	194	
	#12 Gary, Anawalt, W. Va.	195	
	#13 Gary, Moses, W. Va.	319	
	#4 Gary		
	#5 Gary		
	#8 Gary		
	#11 Gary		
Vera Pocahontas Coal Co., 601 First National Bank Bldg., Welch, W. Va.	Vera #3, Landgraff, W. Va.	211	J. W. Strickler.
Virginia B. Coal Co., Bramwell, W. Va.	Virginia B. Coal Co., McComas, W. Va.	1054	W. Beury.
West Gulf Coal Co., Mt. Hope, W. Va.	Marylane, Maben, W. Va.	1025	P. M. Snyder, Jr.
Weyanoke Coal & Coke Co., 226 S. Ludlow Street, Dayton, Ohio.	Arista, Arista, W. Va.	6	J. S. Stras.
Wilcox Coal Co., P. O. Box 17, Daniels, W. Va.			A. B. Wilcox.
Winding Gulf Collieries, Commercial Bank Bldg., Bluefield, W. Va.	Winding Gulf #1, Winding Gulf, W. Va.	205	E. E. Jones.
	Winding Gulf #2, Winding Gulf, W. Va.	206	
	Winding Gulf #4, East Gulf, W. Va.		
	Louisville, Goodwill, W. Va.		
Wyoming Coal Co., Tams, W. Va.			W. P. Cams.

CMA AREA II, DISTRICT #8

Adams & Miller Coal Co., Mayking, Ky.			
Ajax Coal Co., Bulan, Ky., Hazard, Ky.			George P. Fitz.
Algoma Block Coal Co., Lothair, Ky.	Algoma Block Coal Co., Lothair, Ky.	7	W. E. Prichard.
Alma By-Product Coal Co., McCarr, Ky.	Allburn T-24, McCarr, Ky.	4106	J. M. Nowlin.
America Coal Co., Zebulon, Ky.			
American Eagle Colliery, 231 South LaSalle Street, Chicago 4, Ill.	#70, Gneagle, W. Va.	3672	S. Peabody, Jr.
American Rolling Mill Co., Montcoal, W. Va.	#1, Montcoal, W. Va.	341	Charles R. Rock.
	#2, Stickney, W. Va.	342	
	#3, Nellis, W. Va.	346	
	#4 Montcoal, W. Va.	343	
	#5, Montcoal, W. Va.	7000	
	#6, Montcoal, W. Va.	7327	
Ames Mining Company, Box 831, Charleston, W. Va. (Also D-7).	Mingo, Thacker, W. Va.	334	D. H. Martan.
Amherst Coal Co., 1719 Kanawha Valley Bldg., Charleston 22, W. Va.	Amherst Coal Co., Lundale, W. Va.	302	H. E. Jones.
	Amherst Coal Co., Eagle, W. Va.	305	
	Amherst Coal Co., Slagle, W. Va.	607	
	Amherst Coal Co., Yolyn, W. Va.	303	
	#1 A, Amherstdale, W. Va.	16	
	#1 B, Amherstdale, W. Va.	15	
	#1 C, Amherstdale, W. Va.	7080	
	#3 A, Accoville, W. Va.	5271	
	#3 B, Accoville, W. Va.	17	
	#3 C, Accoville, W. Va.	7314	
Anchor Coal Co., 1148 Terminal Tower, Cleveland, Ohio.			Frank L. Hornickel.
Atlas Coal Co., 308 Comer Bldg., Birmingham, Ala.	Atlas Mine, Capito, Bell County, Kentucky.	85	C. S. Blair.

Mines in Government possession 15 November 1946—Continued

CMA AREA II, DISTRICT 28—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Ball Creek Coal Co., Inc., P. O. 191, Sunbury, Penna.	Ball Creek Coal Co., Inc., Ary, Ky.	7008	C. W. Degon.
Banner Fuel Corp., Cranes Nest, Va.	Cranes Nest Mine, Cranes Nest, Va.	140	E. P. Litton. Kanes Bowling.
Bardo Coal Mining Co., Burwell Bldg., Knoxville, Tenn.			
Bartley & Childers' Coal Co., Big Branch, Ky.	Bartley & Childers Heller, Ky.	3977	Brice Childers.
Bartley Coal Co., Praise, Ky.			
Bartlick Mining Corp., Box 629, Kingsport, Tenn.	Lonesome Branch, Bartlick, Va.	297	E. O'Toole, Jr.
Bates & Wright Coal Co., Whitesburg, Ky.			
Beaver Coal & Mining Co., 2005 Toledo Trust Bldg., 245 Summit Street, Toledo, Ohio.	Beaver Mine, Drift, Floyd County, Kentucky.	35	A. B. Miller.
Belfry Coal Co., Belfry, Ky.			
Bell Coal Co., Relia, Ky.			B. W. Whitfield. Guy Darst.
Benedict Coal Corp., Hamilton Nat. Bank Bldg., Knoxville, Tenn.			
Bessemer Coal, Iron & Land Co., 1st Nat'l Bank Bldg., Birmingham, Ala.	Wind Rock, Wind Rock, Tenn.	487	W. C. Hutchison.
Big Creek Coal Co., Box 487, Logan, W. Va.			W. E. Steele.
Big Jim Coal Co., Blanche, Ky.			Peyton Guthrie.
Big Sandy Elkhorn Collieries, General Delivery, Pikeville, Ky.	K & M Mine, Shelby, Ky.	4156	T. R. Marcum.
Birchton Coal Co., P. O. Box 2746, Huntington 19, W. Va.	Birchton #1 Mine, Birchton, Raleigh County, W. Va.	46	Frank Enslow. Charles C. Dickinson.
Black Band Coal Co., Kanawha Valley Building, Charleston, W. Va.			
Black Creek Coal Co., Blackwood, Va.	Strip Mine, Blackwood, Va.	7484	O. W. Trinkle.
Black Diamond Coal Mining Co., 308 Comer Bldg., Birmingham 3, Ala.	Marion Mine, Marion, Claiborne County, Tenn.	317	C. S. Blair.
Black Gold Mining Co., P. O. Box 509, Hazard, Ky.	Black Gold, Lothair, Ky.	48	James B. Marcum.
Black Mountain Corp., 231 S. LaSalle St., Chicago, Ill.	#30 Kenvir, Ky.	49	Stuyvesant Peabody, Jr.
Black Star Coal Corp., 303 Speed Building, Louisville, Ky.	#31, Kenvir, Ky.	50	
	Black Star Mine, Alva, Harlan County, Kentucky.	51	W. S. Speed.
	Dixie Star Mine, Wilfred, Harlan County, Kentucky.	170	
Blackwood Fuel Co., Blackwood, Va.	Pardee, Pardee, Va.	564	B. W. Whitfield, Jr.
	Calvin, Calvin, Va.	80	
Blair City Coal Co., Pikeville, Ky.	Pointsettia Block, Tenn.	500	W. O. Polk.
Block Coal & Coke Corp., 804 Hamilton Bank Bldg., Knoxville, Tenn.			Jno E. Campbell.
Blondell Coal Co., Tribbey, Ky.			James B. Marcum.
Blue Bird Mining Co., P. O. Box 509, Hazard, Ky.	Blue Bird, Anco, Ky.	4	
Blue Creek Coal Co., Box 769, Charleston, W. Va.	Blue Creek Coal Co., 411 Davidson Bldg., Charleston, W. Va.	7107	M. W. Griffith.
Blue Diamond Coal Co., P. O. Box 80, Knoxville, Tenn.	Blue Diamond, Blue Diamond, Ky.	54	Alexander Bonneyman.
	Leatherwood, Slemp, Ky.	7300	
	Crown, Cheyrolet, Ky.	143	
	Path Fork, Path Fork, Ky.	7274	
	Eagan, Eagan, Tenn.	180	
	Westbourne, Westbourne, Tenn.	485	
	Fork Ridge, Fork Ridge, Tenn.	205	
	Royal Blue, Royal Blue, Tenn.		
	Mayflower, Bonny Blue, Va.	323	
	Imperial Leora Mines, Va.	251	
	Monarch, Leora Mines, Va.	339	
	Toms Creek, Toms Creek, Va.	421	
Bluebead Coal Co., Praise, Ky. (Taken over by A. J. Dalton.)			
Boone County Coal Corp., Sharples, W. Va.	Boone #2, Sharples, W. Va.	65	W. J. Clothier.

Mines in Government possession 17 November 1946—Continued

UMWA AREA II, DISTRICT 28—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Borderland Colleries Co., 79 E. State Street, Columbus, Ohio.	Borderland Thacker, Borderland, W. Va.	831	W. S. Leckie.
Bower Coal Co., Inc., Iaeger, W. Va.			
Brimstone Coal Corp., Red Jacket, W. Va.	Brimstone, New River, Tenn	7283	J. W. Damron.
Buchanan Coal Co., Hazard, Ky.			
Buchanan County Coal Corp., P. O. Box 192, Welch, W. Va.	Buchanan #1, Big Rock, Va Buchanan #2, Big Rock, Va	71 72	J. W. Strickler.
Buffalo Chilton Coal Co., Amberstdale, W. Va.	Mine #1, Kistler, W. Va	76	John A. Kelly.
Buffalo Coal Co., Iaeger, W. Va. (2200-B).			
Buffalo Eagle Mines, Inc., Braeholm, W. Va.	Riley #1, Braeholm, W. Va Riley #2, Braeholm, W. Va	666 667	D. E. Hensley.
Burke Elkhorn Coal Co., Pikeville, Ky.	Burke Mine, Pikeville, Ky	5656	Wayne M. Burke. F. M. Weisenfelder.
Burning Springs Collieries Co., 714 National Bank Building, Cincinnati, Ohio.			
C. & C. Coal Co., Pineville, Ky.			Clyde Guthrie.
Cairnes Coal Mining Co., Middlesboro, Ky.	Cairnes Coal Mining Co., Middlesboro, Ky.	79	Mary H. Bruce.
Call Fuel Co., Canabrake, W. Va. (2200-B).			
Cambria Coal Co., Box 1351, Knoxville 8, Tenn.	Cross Mountain Mine, Briceville, Tenn.	142	C. W. Henderson.
	Royal Mine, Briceville, Tenn	419	
Cameo Coal Mining Co., 402 Yuster Building, Columbus, Ohio.			F. P. Smith.
Cannelton Coal & Coke Co., Cannelton, W. Va.	Mine #3, Cannelton, W. Va Mine #5, Cannelton, W. Va Mine #6, Cannelton, W. Va	82 83 84	F. O. Harris.
Carbon Fuel Co., 1310 Kanawha Valley Bldg., Charleston, W. Va.			L. N. Thomas.
Carbon Glow Coal Co., Carbon Glow, Ky.			W. D. Skidmore.
Carfax Coal Corp., Coeburn, Va.	Shannon Mine, Coeburn, Va.	4172	C. L. Edwards.
Carrs Fork Coal Co., Masonic Temple Bldg., Portsmouth, Ohio.			
Caudill-Ward Coal Co., Praise, Ky.	Caudill-Ward Coal Co., Praise, Ky. Caudill-Ward Coal Co., Hellier, Ky.	262 4198	C. M. Caudill.
Cedar Grove Collieries, Inc., Cedar Grove, W. Va.			Roger A. Tompkins.
Cedar Grove Mining Co., Box 507, Madison, W. Va.			
Central Elkhorn Coal Co., 145 North High Street, Columbus 15, Ohio.	Lower Seam, Estill, Ky	7126	J. S. McVey.
Central Rex Coal Co., Inc., 103 First Street, La Follette, Tenn. (Leased to Nurex Coal Co., Inc.).	Rex #2, La Follette, Tenn	404	Paul B. Francis.
Chafin-Jones-Heatherman Coal Co., Box 38, Peach Creek, W. Va.	Chafin-Jones-Heatherman Coal Co., Peach Creek, W. Va.	7182	K. S. Heatherman.
Chapmanville Coal Co., Chapmanville, W. Va.	Mine #1, Chapmanville, W. Va.	4156	Charles Matthews.
Ethel Chilton Mines, Inc., Box 2107, Charleston, W. Va.	Ethel #1, Ethel, W. Va Ethel #2, Ethel, W. Va	199	A. L. McCalla.
Chloe Elkhorn Coal Co., Inc., Box 493, Pikeville, Ky.			
Christian Colliery Co., 1500 Walnut Street, Philadelphia 2, Pa.			Andrew G. B. Hogue.
Christie Coal Co., Norton, Va.			
Cinderella Coal Corp., Cinderella, W. Va.	New Cinderella, Hatfield, Ky	5418	C. A. Hamill.
City Elkhorn Coal Co., Prestonburg, Ky.			
City Fuel Co., Hazard, Ky.			M. K. Ebben.
Clean Eagle Coal Co., Logan, W. Va.			
The Clear Branch Mining Co., 245 Summit Street, Toledo 4, Ohio.	Clear Branch, Ligon, Floyd County, Ky.	110	A. B. Miller.
Clearfork Coal Co., Inc., Cumberland Avenue, Middlesboro, Ky.	Clear Fork #1, Fonde, Bell County, Ky. Clearsplint #3, Fonde, Bell County, Ky. Clear Fork-Jellico #4, Fonde, Bell County, Ky.	112 113 7208	S. M. Reams.

Mines in Government possession 15 November 1946—Continued

CMA AREA II, DISTRICT 28—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Clinchfield Coal Corp., Dante, Va	Genefal, Dante, Va		A. R. Matthews.
	No. 2, Dante, Va	114	
	No. 3, Dante, Va	115	
	No. 52, Dante, Va	118	
	No. 7, Clinchco, Va	116	
	No. 8, Clinchco, Va	116	
	No. 9, Clinchco, Va	117	
	General, Clinchco, Va		
Clinchmore Coal Mining Co., 1202 Hamilton Bank Bldg., Knoxville, Tenn.	Mine No. 1, Clinchmore, Tenn.	119	Sam G. Moore.
Clintwood Coal Co., Box 448, Law & Commerce Bldg., Bluefield, W. Va.	Levisa River, Mouthcard, Ky.	5239	W. W. Wood.
Clover Darby Coal Co., Inc., Closplint, Ky.	High Cliff, Closplint, Ky.	7169	F. L. Dupree.
Clover Fork Coal Co., Kitts, Ky.	Clover Fork, Kitts, Ky.	121	A. F. Whitfield, Jr.
Coal Processing Corp., 230 S. Clark Street, Chicago, Ill.	Dixiana "A", Norton, Va.	5574	D. W. Buchanan.
	Dixiana "B", Norton, Va.		
	Dixiana "C", Norton, Va.		
Coalburg Kanawha Mining Co., Coalburg, W. Va.	Belmont #8, Coalburg, W. Va.	413	J. A. Willis.
Coleman Fuel Co., Field, Ky.	Red Bird, Field, Bell County, Kentucky.	392	C. R. Coleman.
Columbus Mining Company, McCormick Building, Chicago, Ill.	Mine #3, Christopher, Ky.	124	Paul Allais.
	Mine #4, Allais, Ky.	125	
	Mine #5, Allais, Ky.	126	
	Mine #6, Hilton, Ky.	127	
	Mine #9, Combs, Ky.	128	
	Mine #10, Barridge, Ky.	129	
Consolidation Coal Co. (Ky.), Jenkins, Ky.	Clover Splint, Closplint, Ky.		S. M. Cassidy.
	#155, Van Lear, Ky.	132	
	#207, Jenkins, Ky.	5445	
	#214, McRoberts, Ky.	135	
	#204, Jenkins, Ky.		
	#206, Durham, Ky.		
	#206-B, Durham, Ky.		
	#207, Durham, Ky.	7178	
Consumers By-Product Coal Co., Inc., Pikeville, Ky.	Dry Fork #1, Shelbiana, Ky.	599	C. D. Jacobs.
Consumers Mining Corp., Box 29, Tazewell, Va.	Mine #1, Tazewell, Va.	377	R. O. Van Dyke.
Cooley-Elkhorn Coal Co., Wayland, Ky.	Mine #1, Garrett, Ky.	7137	Frank Cooley.
Cornett Hill Coal Co., Kodak, Ky.	Cornett Hill, Vicco, Ky.	681	E. A. Hammonds.
Cornett-Lewis Coal Co., Louellen, Ky.	Splint Seams Mine, Louellen, Ky.	137	D. B. Cornett.
	Harlan Seam Mine, Louellen, Ky.	138	
Creech Coal Co., Twila, Ky.			R. W. Creech.
Ester & Effie Croley, Gatlief, Ky.			
Crummies Creek Coal Co., Crummies, Ky.	Crummies #1, Crummies, Ky.	144	W. J. Cunningham.
Crystal Block Mining Co., 1305 West Virginia Building, Huntington 15, W. Va.	No. 1, Rawl, W. Va.	147	J. M. Tulley.
	No. 3, Lobata, W. Va.	7125	
	No. 4, Sarah Ann, W. Va.	148	
	No. 5, Roth, Va.		
Crystal Block Coal & Coke Co., 1305 West Virginia Building, Huntington 15, W. Va.			
Cutshin Coal Co., Combs, Ky.	No. 1 Mine, Wooton, Ky.	3647	E. J. Davis.
A. J. Dalton, Pikeville, Ky.			
Darb Fork Coal Co., P. O. Box 509, Hazard, Ky.	Darb Fork, Darfork, Ky.	151	E. B. Johnson.
Darby Coal Corp., Verda, Ky.	Blue Heart Mine, Le Junior, Ky.	472	Pearl Bassham.
Dartmont Coal Co., Evart, Ky.	Dartmont Coal Co., Evart, Ky.	7074	Harry M. Bennett.
D. F. Davis Coal Co., Jackson, Ky.			
Dayton Coal Co., Stoneman Building, Columbus, Ohio.	New Howard, Surosa, W. Va.	350	H. E. Clary.
Deane Coals, Inc., Pineville, Ky.			
Derifield Coal Co. (E. P. Derifield), Pinsonfork, Ky.			E. P. Derifield.

Mines in Government possession 15 November 1946—Continued

CMA AREA II, DISTRICT 28—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Diamond Coal Mining Co., Caryville, Tenn.	Diamond #2, Devonia, Tenn	164	H. E. Jackson.
	Diamond #2-B, Rosedale, Tenn.	7117	
Diamond Elkhorn Coal Co., Garrett, Ky.	Diamond #3, Caryville, Tenn	165	
Dixie Darby Fuel Co., Verda, Ky	Marne #3 Mine (Dixie), Le Junior, Ky.	167	Pearl Bassham.
Dixport Coal Co., Kanawha Valley Building, Charleston, W. Va.			C. C. Dickerson.
Dorton Elkhorn Coal Co., Inc., Dorton, Ky.			
Draper Mining Co., Box 1150, Logan, W. Va.			W. T. Harvey.
Dyke Coal Co., P. O. Box 286, Williamson, W. Va.	Big Splint, Nolan, W. Va	7424	M. C. Clark.
Earlston Coal Co., Kermit, W. Va	Earlston, Kermit, W. Va	182	J. D. McLaughlin.
Eastern Coal Corp., Federal Street, Bluefield, W. Va.			Lawrence E. Tierney, Jr.
Eastern Gas & Fuel Associates (Koppers Coal Division), 1050 Koppers Building, Pittsburgh, Penna. (Also D-1, D-2, D-7.)	Wharton, Wharton, W. Va	489	L. C. Campbell.
	Powellton #3 Eagle, Elkridge, W. Va.	7229	
	Powellton #3, Elkridge, W. Va.	373	
	Kopperston #1, Kopperston, W. Va.	530	
	Kopperston #2, Kopperston, W. Va.	619	
	Weeksbury, Weeksbury, Ky	486	
Edgemont Fuel Co., Drift, Ky			
Elcomb Coal Co., Box 151, Harlan, Ky			
Electro Metallurgical Co. (W. W. Jennings), Alloy, W. Va.	Alloy #2, Alloy, W. Va	11	W. W. Jennings.
Elk Creek Coal Co., Amherstdale, W. Va.	Mine No. 1, Emmett, W. Va	187	J. A. Kelly.
	Mine No. 2, Emmett, W. Va	725	
Elkhorn Coal Corp., 308 Union Trust Building, Charleston, W. Va.			A. A. Goldsmith.
Elkhorn Coal Co., 230 S. Clark St., Chicago, 4, Ill.	King Kona #2, Kona, Letcher County, Kentucky.	285	R. B. Starek.
Elkhorn Collieries Corp., First Nat'l Bank Bldg., Cincinnati, Ohio.			A. C. Slemp
Elkhorn Creek Coal Co., Dorton, Ky			
Elkhorn Ferguson Coal Co., Pikeville, Ky.			
Elkhorn Jellico Coal Company, Whitesburg, Ky.			
Elkhorn Junior Coal Co., Thornton, Ky.	Lorraine #2, Thornton, Ky	7302	P. W. Slemp.
Elkhorn Mining Co., Pikeville, Ky	Elkhorn City, P. O. Praise, Ky.	4141	James B. Stephenson.
Emperor Coal Co., c/o Portsmouth Steel Corp., Portsmouth, Ohio.	Freeburn Mine, Freeburn, Ky.	309	E. A. Swartz.
The Epic Coal Co., Inc., Box 398, Logan, W. Va.			
Esson Coal Co., Wallins Creek, Ky	Esson Coal Co., Wallins Creek, Ky.	7022	James L. Howard.
Evans Elkhorn Coal Co., Lackey, Ky	Jones' Fork, Lackey, Ky		George E. Evans, Jr.
	Evans, Lackey, Ky		
	Lackey, Lackey, Ky		
Evans Pocahontas Coal Co., Panther, W. Va. (7200-B).	Evans Pocahontas Coal Co., Panther, W. Va.	7032	W. H. Day.
Fairfax Coal Co., Kermit, W. Va	Fairfax, McAndrews, Ky	356	J. D. McLaughlin.
Famous Elkhorn Coal Co., Robinson Creek, Ky.	Johnson #1, Robinson Creek, Ky.	691	Fon Johnson.
Fayette-Jellico Coal Co., Warren, Ky			Isaac Congleton.
Fentress Coal & Coke Co., 407 Cotton States Building, Nashville, Tenn.			S. C. Boyer.
Fite Fork Coal Co., Pikeville, Ky			
Fleming Coal Co., Inc., P. O. Box 92, Fleming, Ky.	Skaggs #3, Fleming, Ky	4190	R. L. Reed.
	Skaggs #4, Fleming, Ky		
	Skaggs #6, Fleming, Ky		
Floyd Elkhorn Coal Co., Drift, Ky			
H. E. Folk Mining Co., Blackwood, Va	Folk #3, Blackwood, Va	7654	Price P. McLemore, Jr.
Ford Motor Co., 300 Schaefer Road, Dearborn, Mich. (Mines operated by Eastern Coal Corp., Bluefield, W. Va.)			

Mines in Government possession 15 November 1946—Continued

CMA-AREA II, DISTRICT #8—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Fork Mountain Coal Co., Williamsburg, Ky.	Dean, Fork Mountain, Tenn.	204	B. E. Cheelyn.
	Regal, Fork Mountain, Tenn.	400	
Fort Branch Mining Co., Logan, W. Va.	Lyburn Mines, Logan, W. Va.	206	W. H. Glover.
Four Seam Coal Corp., Bramwell, W. Va.	Four Seam #1, Hazard, Ky.	207	R. H. Kelly.
	Four Seam #3, Hazard, Ky.	7304	
Fox Ridge Mining Co., Box 447, Pineville, Ky.			Joseph T. Osler.
Jennie Francis Coal Co., Letcher, Ky.	Litch, Letcher, Ky.	169	F. S. McComas.
Garden Gap Coal Co., Hanover, W. Va. (2200B).	Garden Gap Coal Co., Pineville, W. Va.		C. W. Shuffleburger.
Garmeada Coal Co., Middlesboro, Ky.			J. S. Greene.
Gatliff Coal Co., Main Street, Gatliff, Ky.			J. B. Gatliff, Jr.
Gay Coal & Coke Co., Mount Gay, W. Va.	Mine #2, Mount Gay, W. Va.	215	Harry Gay.
	Mine #3, Mount Gay, W. Va.	216	
Gay Mining Co., Mount Gay, W. Va.	Ben Creek #1, Mount Gay, W. Va.	890	Harry S. Gay.
	Ben Creek #2, Mount Gay, W. Va.	7426	
Georges Creek Coal Co., Liberty Trust Building, Cumberland, Md. (Also D.-L.)	Hetzel #1, Hetzel, W. Va.		R. L. Stallings.
	Hetzel #2, Hetzel, W. Va.	726	
	Hetzel #3, Hetzel, W. Va.		
Glen Alum Coal Co., Glenalum, W. Va.	Glen Alum, Glenalum, W. Va.	219	W. W. Walker.
Dorothy Glenn Coal Mining Co., Dry Branch, W. Va.	Dorothy Glenn Coal Mng. Co., Dry Branch, W. Va.	7002	V. B. Darby.
Glogora Coal Co., Box 565, Huntington, W. Va.			
Goldie Baye Mining Co., Cedar Grove, W. Va.	Barrister, Cedar Grove, W. Va.	7270	R. F. Willis.
Dorothy Gordon Mining Co., 16 East Broad street, Columbus 15, Ohio.	Mine No. 6, Gordon, W. Va.	7241	Fred Essex.
Grayson Block Mining Co., T. D. Draughn, Hazard, Ky.			
Greene Brothers Coal Co., Box 517, Madison, W. Va.	Greene Brothers Coal Co., Madison, W. Va.	1376	L. C. Greene.
Greenough Mining Co., Inc., Rockhouse, Ky.			D. H. Clark.
Guaranty Elkhorn Coal Co., Drift, Ky.			
Guyan Eagle Coal Co., J. R. Fields, Amberstdale, W. Va.	Guyan Eagle #1, Amberstdale, W. Va.	226	John A. Kelly.
	Guyan Eagle #3, Amberstdale, W. Va.	227	
Hager Hill Mining Co., Lothair, Ky.	Hager Hill Mining Co., Paintsville, Ky.	5029	M. H. Smith.
Hamill Coal Corp., Cinderella, W. Va.	Hamill #1, Argo, Ky.	7331	C. A. Hamill.
Hamilton Coal Co., Williamson, W. Va. (2300B).			
Happy Scuddy Coal Co., Box 1351, Knoxville, Tenn.	Happy-Scuddy Coal Co., Knoxville, Tenn.	425	C. W. Henderson.
Hardy-Burlingham Mining Co., 903 Newport Finance Bldg.; Fourth & York Streets, Newport, Ky.	Hardburly, Hardburly, Ky.	231	M. R. Dayton.
Harlan Collieries Co., Brookside, Ky.	Brookside, Brookside, Ky.	68	B. W. Whitfield, Jr.
Harlan Fuel Co., Yancey, Ky.	Harlan Fuel Co., Yancey, Ky.	309	Pete Guthrie.
Harlan Wallins Coal Corp., Verda, Ky.	Marne #1 Mine, Verda, Ky.	316	Mr. Pearl Basham.
	Number 6 Mine, Verda, Ky.	5573	
	Molus Mine, Molus, Ky.	337	
	Marne #2 Mine (Darby), Evarts, Ky.	152	
	Number 4 Mine, Evarts, Ky.		
Harlow Coal Co., Neon, Ky.			O. M. Harlow.
H. E. Harmon Coal Corp., Harmon, Va.			
Harold Fuel Co., Inc., Harold, Ky.			
Harvey Coal Corp., 413 Fidelity Bankers Trust Bldg., Knoxville, Tenn.	Harvey Coal Corp., Harveyton, Ky.	236	Calvin Holmes.
Hatfield Campbell Creek Coal Co., 832-32 Union Trust Building, Cincinnati 2, Ohio.	Glomawr, Glomawr, Perry County, Ky.	221	Irvin Davis.
	Point Lick No. 4, Point Lick, Kanawha County, W. Va.	370	
	Putney 1-3, Putney, Kanawha County, W. Va.	382	
Hellier Coal & Coke Co., Inc., 1717 Oliver Building, Pittsburgh, Pa.	Allegheny, Hellier, Ky.		
Hi-Hat Elkhorn Mining Co., Hi-Hat, Ky.			

Mines in Government possession 15 November 1946—Continued

CMA AREA II, DISTRICT 28—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
High Point Coal Co., Box 1351, Knoxville, Tenn.			C. W. Henderson.
High Point Elkhorn Coal Co. (J. E. Bowman) Pikeville, Ky.	High Point Elkhorn Coal Co., #1, Rockhouse, Ky.		J. E. Bowman.
High Splint Coal Co., Main Street, Williamsburg, Ky.	Hi-Lo, High Splint, Ky.	244	J. B. Gatliff, Jr.
High Vein Coal Co., Cedar Grove, W. Va.	Amelia Mine, Amelia, W. Va.	7980	W. J. Morrow.
Hoey Elkhorn Coal Co., Kona, Ky.			
Hollan & Wright, Whitesburg, Ky.			
Holley Coal Co., Ottawa, W. Va.			
Home Creek Smokeless Coal Co., Inc., Box 669, Bluefield, W. Va.	Home Creek Smokeless Coal Co., Inc., Home Creek, Va.	285	F. Elwatch. C. W. French.
Hutchinson Coal Co., Monroe Street, Fairmont, W. Va. (Also D 3).	Hutchinson #9, Hutchinson, W. Va.	394	Robert A. Ritchie.
	Hutchinson #8, Delbar, W. Va.	150	
Imperial Colliery Co., 31 Lynch Building, Lynchburg, Va.	Imperial #6, Burnwall, W. Va.	5178	C. Lynch Christian.
	Imperial #8, Burnwall, W. Va.	7222	
Indian Creek Coal Co., Inc., 806 Hamilton Bank Building, Knoxville 2, Tenn. (Attn of Mr. R. A. Wedekind).	Indian Creek, Indian Creek, Tenn.	7616	W. G. Polk.
Inland Steel Co., 38 S. Dearborn Street, Chicago, Ill.	Inland Steel Co., Wheelwright, Ky.	490	W. Sykes.
Island Creek Coal Co., Guaranty Bank Bldg., Huntington, W. Va.	Island Creek #1, Holden, W. Va.	7480	Jed. Foster.
	Island Creek #7, Holden, W. Va.	257	
	Island Creek #15-A, Holden, W. Va.	3528	
	Island Creek #18S, Holden, W. Va.	780	
	Island Creek #20, Holden, W. Va.	200	
	Island Creek #22, Holden, W. Va.	262	
	Island Creek #23, Holden, W. Va.	7370	
	Island Creek #24 (Under development), Holden, W. Va.		
Island Creek Mining Co., P. O. Box 252, Pikeville, Ky.	Island Creek Mining Co., Island Creek, Ky.	3945	Bradford Runyon.
Jackson Coal Co., Shelby Gap, Ky.			
Jackson Mining Co., 17 S. High Street, Columbus, Ohio.	Dorothy Dale, Olcott, W. Va.	372	J. S. McVey.
Paul Johnson, Chavies, Ky.	Paul Johnson, Chavies, Ky.	7016	Paul Johnson.
Johnson Supply Co., Chavies, Ky.	Johnson Supply Co., Chavies, Ky.	7003	Otie Farra.
Josephine Elkhorn Coal Co., Prestonburg, Ky.	Josephine Elkhorn Coal Co. #10, Prestonburg, Ky.		George T. Roberts.
	Josephine Elkhorn Coal Co. #8, Prestonburg, Ky.		
	Josephine Elkhorn Coal Co. #2, Prestonburg, Ky.	1112	
	Josephine Elkhorn Coal Co. #7, Prestonburg, Ky.		
Kanawha Coal Corporation, Eskdale, W. Va.			T. C. Weeks.
Kanawha & New River Barge & Rail Coal Mines, Inc., Crown Hill, W. Va.	Winifrede, Crown Hill, W. Va.	538	E. L. Michie.
	Crown Hill #8, Crown Hill, W. Va.	4137	
Kathryn Elkhorn Coal Co., Drift, Ky.			
Kelly's Creek Colliery Co., 810 Western Reserve Building, Cleveland, Ohio (Also D-3).	Mine No. 2A, Ward, W. Va.	275	Harry T. Ewing.
	Mine No. 2B, Ward, W. Va.	594	
	Mine No. 4, Ward, W. Va.	603	
	Mine No. 3, Hughestown, W. Va.	2057	
Kemmerer Gem Coal Co., St. Charles, Va.	Mine No. 2, St. Charles, Va.	278	C. F. Connelly.
The Kenmont Coal Co., 2886 Toledo Trust Building, 245 Summit Street, Toledo, Ohio.	Kenmont, Jeff Perry County, Ky.	279	A. B. Miller.

Mines in Government possession 15 November 1946—Continued

CMA AREA II, DISTRICT 8—Continued

Mine's company and address	Mine name and address	Index No.	Operating manager
Kentucky Blue Grass Mng. Co., P. O. Boxes, Hazard, Ky.	Blue Grass Mining Co., #9, P. O. Box #9, Hazard, Ky.	7457	Wm. Pendleton.
Kentucky Cardinal Coal Corp., Cardinal, Ky.	Cardinal #1, Cardinal, Ky.	93	J. C. Straus.
Kentucky Darby Coal Co., Pennington Gap, Va.	Kentucky Darby Coal Co., Pennington Gap, Va.	2173	Charles D. Cole.
Kentucky Elkhorn Mining Co., Drift, Ky.	Columbia #2, Drift, Ky. Turner #3, Drift, Ky.	7417	J. E. Cooley.
Kentucky Jellico Coal Co., Kay Jay, Ky.	Kayjay, Kay Jay, Ky.	272	B. W. Whitfield.
Kentucky Relief Coal Co., Fleming, Ky.	Crockett Mine, Fleming, Ky.	155	W. S. Webster.
Kentucky Straight Creek Coal Co., Four Mile, Ky.	J. B. #2, Four Mile, Ky.		W. E. Lewis.
	Helen #2, Four Mile, Ky.		
Kentucky Sun Coal Co., Transportation Building, Cincinnati, Ohio.	Kentucky Sun Coal Co., Combs, Ky.	454	F. H. Davis.
Kimberling Collieries Co., 405 Yeager Building, Columbus, Ohio.	Kimberling, Gilbert, W. Va.	4178	Pearl Rader.
Kingston Pocahontas Coal Co., 40 Exchange Street, New York, N. Y. (also [illegible])	Kingston Eagle seam, Kingston, W. Va.	283	A. E. Scherm.
	Kingston Pocahontas seam, Kingston, W. Va.	520	
Kinney Elkhorn Coal Co., Shelbourne, Ky.			
Knott Coal Corp., Ames, Ky.	Knott, Ames, Ky.	284	Hugh Bulford.
Lambert Coal Co., 17 S. High Street, Columbus, Ohio.	Maywood Mine, Seth, W. Va.	3750	F. S. McVey.
Lambert Company, Hi Hat, Ky.			F. P. Smith.
Lamp Coal Corp., 1003 Guaranty Bank Building, Huntington, W. Va.			
Lee Mining Co., P. O. Box 2107, Charleston 28, W. Va.	Dale Richie Mine, Boomtown, Va.	7405	A. L. McCalla.
Leckie Collieries Co., 20 East State Street, Columbus 15, Ohio.	Alma, Alex, Ky.	786	W. S. Leckie.
Leckie Collieries, Inc., Kanawha Valley Building, Charleston, W. Va.	Freeburn, Alex, Ky.	3	Charles C. Dickinson.
Liberty Elkhorn Mining Co., Drift, Ky.			
Linn Company, Hi Hat, Ky.			
Little Creek Coal Co., Neon, Ky.			
Locust Alma Coal Co., Logan, W. Va.	Rith, Rith, W. Va.	411	W. S. Leckie.
Locust Clinton Coal Co., 20 East State Street, Columbus, Ohio.			H. E. Jones.
Logan County Coal Corp., P. O. Box 4, Charleston 22, W. Va.			
Logan Powellton Coal Co., Box 251, Montgomery, W. Va.	McCall #1, Christian, W. Va.	7262	Ed. Breit.
Lone Coal Co., Belle, W. Va.	McCall #2, Christian, W. Va.	324	
Lorado Coal Mining Co., 1st National Building, Columbus, Ohio.	Lorado Coal Mng. Co., Lorado, W. Va. (Logan County).		G. C. Johnson.
Lost Ark Mines, Pikeville, Ky.			
Lyburn Mines, Inc., Box 247, Logan, W. Va.			
Lynn Camp Coal Corp., Main Street, Tazewell, Va.	Lynn Camp Coal Corp., Tazewell, Va.	303	R. O. Van Dyke.
Mahan Pillion Coal Corp., Williamsburg, Ky.	Mahan Mine, Lasley, Tenn.	7097	C. R. Griffith.
	Mahan Mine, Route #2, Lowery, Tenn.	7736	
Majestic Collieries Co., 708 Peery Building, Bluefield, W. Va.	Stanhope Mine, Liggette, Ky.	307	J. A. Dickinson.
	Majestic #1, Majestic, Ky. (Pike County)	309	W. W. Walker.
	Majestic #2, Majestic, Ky. (Pike County)	5398	
Manitoba Mining Co., P. O. Box 2107, Charleston 28, W. Va.	Manitoba, Ethel, W. Va.	7252	L. I. Burns.
Maryanne Coal Co., Conaway, Va.	Margaret Ann, Conaway, Va.	3781	Thomas H. Pritchard.
Matheny Coal Co., Scuddy, Ky.	Defiance, Scuddy, Ky.	158	M. K. Marlowe.
	Marlowe Coal Co., Whitesburg, Ky.	507	
Matney Coal Co., Henshaw, W. Va.			L. K. Marmet.
Matt Helen Coal Corp., Coalgood, Ky.			
Matewan Fuel Co., Inc., Matewan, W. Va.	Matewan, Fuel Co., Inc., Matewan, W. Va.	500	E. J. Stewart.
McDade Coal Co., 912 Hamilton Nat'l Bank Bldg., Knoxville 2, Tenn.	McDade Coal Co., Motch, Tenn.	516	James S. McDade.
Meem-Haskins Coal Corp., Bluefield, W. Va.	Meem-Haskins #2 Mine, Kodak, Perry County, Ky.	326	Gilbert S. Meem.

Mines in Government possession 15 November 1946—Continued

CMA AREA II, DISTRICT 8—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Merrill Coal Co. (C. W. Jones), Henlawson, W. Va.	Merrill, Henlawson, W. Va.		C. W. Jones.
Milburn By-Product Coal Co., Milburn, W. Va.			B. Elsey.
Mile Branch Coal Co., Crown Hill, W. Va.	Monarch, Crown Hill, W. Va	338	E. L. Mitchie.
Millstone Coal Co., Millstone, Ky			
Monarch Coal Co., Cedar Grove, W. Va			Mitchell Pashid.
Monitor Coal & Coke Co., Wilkinson, W. Va.	Monitor Alma #2, Wilkinson, W. Va.	167	Arthur Downing.
	Yuma Alma #3, Wilkinson, W. Va.	4102	
Moore Branch Coal Co., Hitchins, Ky.	Moore Branch #1, Hitchins, Ky.	1071	George Stevens.
Moore Coal Co., 1202 Hamilton Bank Building, Knoxville, Tenn.	Moore Coal Co., Devonia, Tenn.	344	Sam G. Moore.
Moore Elkhorn Coal Co., Shelby Gap, Ky.	Moore Elkhorn Coal Co., Clintwood, Va.	5412	Grady G. Baker.
Mountain Coal Co., Pikeville, Ky.	Mountain Coal Co., Pikeville, Ky.	5841	Edwin McGhee.
Muzzle Coal Co., Pineville, W. Va.			
Nancy Elkhorn Coal Co., Drift, Ky.			
New Alma Coal Co., McCarr, Ky.	New Alma, McCarr, Ky.	348	J. D. McLaughlin.
New Jellico Coal Co., Morley, Tenn.	Blue Rose Mine, Morley, Tenn.	61	W. S. Webster.
	Anthras Mine, Anthras, Tenn.	22	
Norfolk & Chesapeake Coal Co., 2614 Book Tower, Detroit, Mich.			H. T. Wilson.
Norfolk & Western Railways Co., 8 North Jefferson Street, Roanoke, Va.	Howard Collieries Chattaroy, W. Va. Pond Creek Collieries, Williamson, W. Va.		W. J. Jones.
North-East Coal Co., 3200 Lewis Tower, Philadelphia, Pa.			
Norton Coal Co., Norton, Va	Mine #11, Norton, Va	353	W. J. Willits.
	Blair Strip Mine, Norton, Va	7161	
Nowlin Winifrede Coal Co., McCarr, Pike County, Ky.	Buffalo, Chattaroy, Mingo County, W. Va.	75	M. J. M. Nowlins.
Nurex Coal Co., Inc., P. O. Box 443, La Follette, Tenn.	Nurex, La Follette, Tenn	354	
	Rex #2, La Follette, Tenn	404	
Old King Mining Co., Transportation Building, Cincinnati, Ohio.	The Old King Mining Co., Tribbey, Ky.	330	F. H. Davis.
Orlandi Coal Co., Ashford, W. Va	Orlandi #2, Ashford, W. Va.	360	Orazio Orlandi.
P. V. & K. Coal Co., Main Street, Monongahela, Pa.	Clover Gap, Le Junior, Ky	122	Robert H. Robinson.
Packard Mining Co., Packard, Ky	Bethany, Bethany, W. Va		
Page Pocahontas Coal Corp., Box 192, Welch, W. Va.	Page, Page, Va		J. W. Strickler.
Panther Coal Co., Inc., 79 E. State Street, Columbus, Ohio (also D-3)	Roseann, Roseann, Va	417	W. S. Leckie.
Panther Red Ash Coal Corp., Panther, W. Va.	Dougla Panther, W. Va	176	M. Whaley.
Clay D. Pauley, Fork Junction Coal Co., Morrisvale, W. Va.			
Peerless Coal Corp., Glamorgan, Va.	Glamorgan #4, Glamorgan, Va.	218	W. C. Shunk.
	Glamorgan #6, Glamorgan, Va.		
Peerless Derby Coal Co., Inc., Vivian, W. Va.	Derby, Splint, Ky	437	Roland C. Luther.
Perkins-Harlan Coal Co., Williamsburg, Ky.	Liggett Mine, Liggett, Ky	253	David A. Perkins.
Pewee Coal Co., 1003 Burwell Building, Knoxville, Tenn.			
Pike County Collieries, Inc., Pikeville, Ky.			
Pinson Coal Co., Big Branch, Ky.	Pinson Coal Co. Mine #1, Big Branch, Ky.	4143	Otto Sykes.
	Pinson Coal Co. Mine #2, Big Branch, Ky.		
Pioneer Coal Co., 303 Speed Building, Louisville, Ky.	Pioneer Coal Co., Kettle Island, Bell County, Ky.	368	W. S. Speed.
Polly & Belcher Coal Co., Whitesburg, Ky. (This mine was taken over by Raymond Taylor, Kona, Ky.)	Lonesome Mine, Kona, Ky		

Mines in Government possession 15 November 1946—Continued

CMA AREA II, DISTRICT 8—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Porter Elkhorn Coal Co., Martin, Ky.	Porter #2, Printer, Ky.	1110	Henry Porter.
	Porter #4, Printer, Ky.	5788	
	Porter #4A, Printer, Ky.		
	Porter #5, Printer, Ky.		
	Porter #7A, Printer, Ky.	7014	
	Porter #6, Printer, Ky.	815	
	Porter #9, Martin, Ky.	7063	
	Porter #14, Printer, Ky.		
	Porter #15, Printer, Ky.		
	Goldia #3, McDowell, Ky.		
	Goldia #4, McDowell, Ky.		
	Goldia #5, McDowell, Ky.		
	Heatly #1, Martin, Ky.		G. J. Stallings.
Powellton Coal Co., Mallory, W. Va.			
Premier Jellico Coal Corp., Middlesboro, Ky.	Premier Jellico Coal Corp., Middlesboro, Ky.	378	E. E. Smith.
Princess Dorothy Coal Co., Eunice, W. Va.			Andrew O'B. Hogue.
Princess Elkhorn Coal Co., (Louise H. Hart) Guaranty Bank Building, Huntington, W. Va.			David L. Francis.
D. H. Prichard Contractor, Inc., P. O. Box 2207 Charleston 28, W. Va.			
Pruden Coal & Coke Co., Pruden, Tenn.	William Ann Mine, Delbarton, W. Va.	495	D. T. McClure.
	Black Creek Mine #2, Pruden, Tenn.	27	D. E. Griffith.
	Mine No. 6, Pruden, Tenn.	7287	
Pucketts Creek Coal Corp., Pennington Gap, Va.	Pucketts Creek Coal Corp., Pennington Gap, Va.	7207 2665	Grover W. Robertson.
Puritan Coal Corp., 1003 Guaranty Bank Building, Huntington, W. Va.			F. P. Smith.
Rader Coal Co., Wooten, Ky.			
Raleigh Wyoming Mining Co., 220 S. Clark Street, Chicago 4, Ill. (Also D-7).	Edwight #1, Edwight, W. Va.	186	D. W. Buchanan.
	Edwight #6 (Hiawatha), Edwight, W. Va.	5700	
Ratliff Coal Co., Lookout, Ky.	Poorbottom, Lookout, Ky.	7212	Trimble Fields.
Raven Red Ash Coal Co., Beckley, W. Va.	Raven Red Ash No. 2, Raven, Va.	391	E. S. Pugh.
Red Ash Smokeless Coal Co., Iaeger, W. Va.	Red Ash Smokeless Coal Co., Iaeger, W. Va.	389	Leo J. Signaigo.
Red Jacket Coal Corp., Red Jacket, W. Va. (Also D-7).	Mitchell Brand, Red Jacket, W. Va.	7360	Paul D. Ritter.
	Red Jacket #6, Red Jacket, W. Va.	394	
	Junior, Red Jacket, W. Va.	267	
	Coal Mountain #11, Coal Mountain, W. Va.	4122	
	Coal Mountain #12, Coal Mountain, W. Va.	7081	
	Keen Mountain, Keen Mountain, Va.	304	
Red Parrott Coal Co., 1425 Terminal Tower Building, Cleveland, Ohio.	Red Parrott #2, Prenter, W. Va.	593	H. G. Schmidt.
	Red Parrott #5, Prenter, W. Va.	308	
	Red Cedar Mine, Keith, W. Va.	153	
Redyard Coal Co., Pineville, W. Va.	Huff Mountain Mine, Oceana, W. Va.	2825	Jesse Redyard.
Rennebaum Coal Co., P. O. Box 124, Middlesboro, Ky.	Rennebaum #1, Fort Ridge, Tenn.	401	Craig Ralston.
Republic Steel Corp., 1630 Republic Building, Cleveland 1, Ohio (Also D-2 and D-13).	Republic, Pikeville, Ky.	5682	J. L. Hamilton.
Rice Elkhorn Coal Co., Garrett, Ky.			Andrew O'B. Hogue.
Ridgeview Coal Co., Ridgeview, W. Va.			E. L. Michie.
Riverton Coal Co., Crown Hill, W. Va.	Riverton #3, Crown Hill, W. Va.	523	
	Riverton #4, Crown Hill, W. Va.	5674	
	Riverton #7, Crown Hill, W. Va.	4144	
Russell Fork Coal Co., Praise, Pike County, Ky.	Russell Fork Coal Co., Praise, Pike County, Ky.	7311	Joseph Harris.
Samtsett Elkhorn Coal Co., Drift, Ky.			
Sanders Elkhorn Coa. Co., Dorton, Ky.			
Sanderson Coal Co., National Bank of Commerce Bldg., Charleston, W. Va.	Sanderson Coal Co. Mine #1, Sanders, W. Va.	7408	S. W. Harrison.

Mines in Government possession 15 November 1946—Continued

CMA AREA II, DISTRICT #8—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Sandlick Coal Co., Whitesburg, Ky	Belcraft Mine, Whitesburg, Ky.	36	L. H. Lewis.
Sandy Valley Coal Co., Prestonburg, Ky.			Charles W. Alley.
Saunders Coal Co., Kenova, W. Va	Saunders Coal Co., Mine #7, Glenview, W. Va.	7418	F. R. Saunders.
Saxton Coal Corp., Box 118, Jellico, Tenn.	Jellico Mine, Jellico, Tenn	1826	Gene H. Utterback.
Schwachter-Thompson Coal Co., Box 2057, Williamson, W. Va.	Patsy Ann Mine, Goodman, W. Va	4158	R. E. Brown, Jr.
Scott-Burke Coal Co., Pikeville, Ky			Mildred Burke.
Semet-Solvay Co., 40 Rector Street, New York, N. Y.	Harewood, Lonacre, W. Va	270	A. E. Scherm.
Shelby Steam Coal Co., Inc., Shelbiana, Ky.	Henry Clay, Lookout, Ky	5477	
Sizemore Mining Corp., Drift, Ky.			
Smith Coal Co., Combs, Ky	Smith Coal Co., Combs, Ky		M. H. Smith.
Paul Smith & Kimball Mounts, Matewan, W. Va. (2206B).			
Snap Creek Coal Co., P. O. Box 1029, Logan, W. Va.			E. J. Payne.
South East Coal Co., Inc., Paintsville, Ky.	Seco No. 1, Seco, Ky	426	Alan J. Smith.
	La Veers No. 2, Milestone, Ky	289	
Southern Collieries, Inc., Williamsburg, Ky.	Southern Colliers, Inc., Lake City, Tenn.	433	B. E. Cheely.
Southern Harlan Coal Co., Williamsburg, Ky.	Southern Harlan Coal Co., Liva Rue, Ky.	434	J. A. Dickinson.
Southern Mining Co., Williamsburg, Ky.	Colmar Mine, Colmar, Ky	18	N. B. Perkins.
	Balkan Mine, Balkan, Ky	29	
	Insull Mine, Insull, Ky	255	
Splashdam Coal Corp., Splashdam, Va.	Splashdam, Splashdam, Va	436	F. E. Musick.
Spruce River Coal Co., 704-07 Ohio Merchants Bank Bldg., Massillon Ohio.	Spruce River #4, Ramage, W. Va.	438	H. Daggart.
Standard Banner Coal Co., Wakenva, Va.			
Stearns Coal & Lumber Co., Stearns, Ky.	Mine #4, Worley, Ky	442	J. E. Butler.
	Mine #11, Yamacraw, Ky	443-7684	
	Mine #18, Barthell, Ky	445-5517	
	Cooperative, Cooperative, Ky.	136-531	
Stephens Elkhorn Fuel Corp., Manton, Ky.			
Stoker Coal Co., Scuddy, Ky	Stoker, Scuddy, Ky	7136	M. K. Marlowe.
Stollings Coal, Guaranty Bank Building, Huntington, W. Va.			
Stonega Coke & Coal Co., 2500 Fidelity-Philadelphia Trust Building, Philadelphia 9, Pa.	Derby, Derby, Va		R. H. Knode.
	Dunbar, Dunbar, Va		
	Imboden, Imboden, Va	250	
	Pine Branch, Dunbar, Va	7223	
	Roda, Roda, Va		
	Stonega, Stonega, Va	451	
Straight Fork Coal Co., Box 1351, Knoxville 8, Tenn.	Straight Fork Coal Co., Knoxville, Tenn.	452	C. W. Henderson.
Sun Coal Co., Box 1351, Knoxville 8, Tenn.	Sun Coal Co., Knoxville, Tenn.	453	C. W. Henderson.
Sword Creek Mining Corp., Main Street, Tazewell, Va.	Sword Creek Mining Corp., Tazewell, Va.	458	R. O. Van Dyke.
Sycamore Coal Co., Cinderella, W. Va	Buccaneer (Cary Seam), Patterson, W. Va.	70	C. A. Hamill.
	Cinderella Mine (Winifrede Seam), Cinderella, W. Va.	108	
	Cinderella Mine (Mingo Seam), Cinderella, W. Va.	333	
	Cinderella Mine (Alma Seam), Cinderella, W. Va.	554	
	Sycamore Coal Co., Bristol, W. Va.	2011	
Sycamore Coal Corp., Cinderella, W. Va.	Buccaneer, Patterson, Virginia.		
Raymond Taylor, Lonesome Pine Mine, Kona, Ky.			
Three Point Coal Corp., Three Point, Ky.	Three Point, Three Point, Ky.	460	Elmer D. Hall.

Mines in Government possession 15 November 1946—Continued

CMA AREA II, DISTRICT #8—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Tierney Mining Co., Perry Building, Bluefield, W. Va.			L. C. Tierney.
Top Hat Mining Co., Drift, Ky			
Totz Coal Co., Totz, Ky			H. H. Bennett.
Truax-Traer Coal Co., 310 South Michigan Ave., Chicago 4, Ill. (Also D-10).	Raccoon West, Kayford, W. Va.	386	A. H. Traux.
	Acme, Kayford, W. Va	1	
	Rose, Kayford, W. Va	416	
	Rose #2, Kayford, W. Va	5628	
	Shamrock, Kayford, W. Va	7369	
	United, United, W. Va	468	
	Marfork, Marfork, W. Va	318	
Turkey Pen Coal Co., Pineville, Ky			Joe Guthrie.
Turner Elkhorn Mining Co., Drift, Ky			
R. C. Tway Coal Co., 2601 S. Third St., Louisville, Ky.			
U. S. Coal & Coke Co., Frick Building, Pittsburgh, Pa. (Also D-7 and D-10.)	Lynch, Lynch, Ky	470	Harry M. Moses.
Utilities Coal Co., Box 1740, Huntington 19, W. Va.	Utilities #62, Kistler, Logan County, W. Va.	4126	Frank Enslow.
Utilities Elkhorn Coal Co., Pikeville, Ky.	Boldman #5E, Boldman, Ky	62	J. E. Bowman.
	Martin #8H, Martin, Ky	321	
	Esco #10K, Esco, Ky	3664	
Victory Coal Co., Neon, Ky			
Virginia Jellico Coal Co., Inc., Coalgood, Ky.	Mine #1, Clairfield, Clairbourne County, Tenn.	282	S. J. Durinson.
	Mine #2, Clairfield, Clairbourne County, Tenn.	422	
Virginia Lee Co., Inc., St. Charles, Va	The Virginia Lee Co., Inc., St. Charles, Va.	480	S. G. Hill.
War Eagle Coals, Inc., War Eagle, W. Va.	War Eagle Coals, Inc., War Eagle, W. Va.	483	John J. Fox.
Warner Collieries Co., 570 Union Commerce Bldg., Cleveland 14, Ohio. (Also D-4.)			Whitney Warner, Jr.
Webb Coal Mining Co., 1212 1st Nat'l Bank Bldg., Cincinnati, Ohio.	Webb Mine, Garrison, W. Va.	485	L. M. Webb.
West Virginia Coal & Coke Corp., 705 Atlas Bank Building, Cincinnati, Ohio. (Also D-3.)	Earling, Omar, W. Va	18[illegible]	Charles Dorrance.
	Micco #3, Omar, W. Va	328	
	Omar #4, Omar, W. Va	358	
	Omar #5, Omar, W. Va	359	
	Omar #15, Omar, W. Va	5556 7600	
	Stirrat #19, Omar, W. Va	448	
West Virginia Coal & Transportation Co., 224 Pioneer Building, St. Paul, Minnesota.	Jeanne Anne #1, West Columbia, W. Va.	1448	P. W. Fitzpatrick.
	Jeanne Anne #2, West Columbia, W. Va.	1449	
Whipple Coals, Inc., Pineville, Ky	Whipple Coals, Inc., Pineville, Ky.	168	J. S. Stewart.
Peter White Coal Co., Law & Commerce Building, Box 609, Bluefield, W. Va.	Peter White Coal Co., Isaban, W. Va.	642	C. W. French.
S. V. Williams, Lookout, Ky			
Winco Block Coal Co., Box 262, Bluefield, W. Va.	Winco Block Mine, P. O. Naigatuck, Mingo County, W. Va.	497	J. T. Wilson.
Winifrede Collieries, Kanawha Valley Bank Bldg., Charleston, W. Va	Winifrede Collieries #2, Winifrede, W. Va.	499	D. H. Morton.
Winisle Coal Corp., Amherstdale, W. Va.	Victor Coal Co., Wise, Va	500	J. E. Davis.
Wisconsin Coal Corp., Wiscoal, Ky	Wisconsin Coal, Wiscoal, Ky	502	Edward H. Jacobs.
Wise Coal & Coke Co., Dorchester, Va	Mine #2	581	R. S. Graham.
	Mine #3 Dorchester, Va.	504	
Wood Coal Co., Charleston, W. Va			W. S. Wood.
Wyatt Coal Co., 1409 Kanawha Valley Bldg., Charleston, W. Va.	Wymar Mine, Sharon, W. Va.	508	D. W. Martin.
	Laing #2 Mine	28[illegible] 5956	
	No. 2 Gas Mine Eskdale, W. Va.	7699	
	Laing #1 Mine	287	
	Laing-Eagle, Laing, W. Va.	286	

Mines in Government possession 15 November 1946—Continued

CMA AREA II, DISTRICT #8—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Wyoming Mining Corp., 1510 Chestnut Street, Philadelphia 2, Pa.	Lynco, Lynco, W. Va	568	Edward C. Page.
Yocum Creek Coal Co., Box 392, Harlan, Ky.	Yocum #3, Lewis, Ky	564	
Youngstown Mines Corp., Stambaugh Bldg., Youngstown 1, Ohio.	Dehue Mine, Dehue, W. Va	159	J. L. Matho.
Youghiogheny & Ohio Coal Co., 330 Hanna Bldg., Cleveland, Ohio.	Van, Van, W. Va		W. M. Osborne.

CMA AREA II, DISTRICT #9

Apex Coal Co., Mortons Gap, Ky. (2200-B).	Apex Coal Co., Mortons Gap, Ky.	2058	E. M. Hopper.
Beech Creek Coal Co., Beech Creek, Ky	Beech Creek, Beech Creek, Ky.	1	R. R. Kirkpatrick.
Bevier Lamb Mining Co., Greenville, Ky.			
Black Diamond Coal Mining Co., Drakesboro, Ky.			
Black Gem Mining Co., P. O. Box 168, Greenville, Ky.			
Charleston Sixth Vein Collieries, Incorporated, Madisonville, Ky.	Redbud Mine, Madisonville, Ky.	2030	Than G. Rice.
Crescent Coal Co., Box 471, Central City, Ky.	Brier Creek, Central City, Ky.	2047	Charles M. Rodman.
Dawson Collieries, Inc., Box D, Dawson Springs, Ky.	Dawson Collieries, Inc., Dawson Springs, Ky.	18	W. A. Borries.
Dawson Daylight Coal Co., Box D, Dawson Springs, Ky.	Dawson Daylight #6	19	J. H. Schneider.
	Dawson Daylight #9 Dawson Springs, Ky.	20	
Flat Creek Coal Co., Main Street, Providence, Ky.			Than G. Rice.
Fort Hartford Coal Co., Hartford, Ky.	Fort Hartford Coal Co., Hartford, Ky.	5	B. B. Hoet.
Grapevine Coal Co., Madisonville, Ky	Grapevine, Madisonville, Ky.	36	L. G. Hayes.
Guerino Mining Co., Beaver Dam, Ky	Martin Mine, Rochester Road, Ky.	53	Fred ReCupedo.
Harps Hill Coal Co., R.F.D. No. 1, Greenville, Ky.	Harps Hill Mine, Graham, Ky.	862	W. K. Evitts.
Hart & Hart, Main Street, City, Ky.	Webster Mine, P. O. Box 338, Providence, Ky.	2024	F. M. Hart.
Hart-Ross Coal Co., Mortons Gap, Ky.	Moss Hill #1	58	Brent Hart.
	Moss Hill #2 Mortons Gap, Ky.	1062	
Industrial Coal Co., Dwight Building, Kansas City 6, Mo. (also D-3).	Charleston #1 Mine, Rt. 1, Dawson Springs, Ky.	2029	E. M. Hopper.
Kirk Coal Mining Co., Browder, Ky	Kirk Mine #3, Drakesboro, Ky.	2036	M. Jones.
Long Coal Mining Co., Madisonville, Ky.	Carbon Valley, Madisonville, Ky.	67	Wade Long.
Louisville Gas & Electric Co., 311 W. Chestnut Street, Louisville 2, Ky.	Cherry Hill Mine, Central City, Ky.	708	T. B. Wilson.
Low Moisture Coal Co., Providence, Ky.	Low Moisture Coal Co., (Duvin Mine), Providence, Ky.	25	W. Fred Kume.
Luzerne Graham Mining Corp., Greenville, Ky.	Skibo Mine, Luzerne, Ky	94	F. A. Hunter.
Morgan Coal Co., 19 W. 38th Street, Indianapolis, Ind. (also D-10, D-11).	Graham Mine, Graham, Ky	35	
	Beaverdam, Beaverdam, Ky	2007	Fred C. Morgan.
	Powerly, Greenville, Ky	989	
	White Plains, White Plains, Ky.	56	
J. F. Mulligan, 111-1/2 South Main, Greenville, Ky.	Bancroft Mine, Greenville, Ky.	2002	J. F. Mulligan.
Nally & Ballard, P. O. Box 331, Bardstown, Ky. (2200-B)			
New Coal Corp., 3150 Touhy Ave., Chicago, Ill.	Newcoal, New Coal, Ky	60	Clarence J. Weber.
Norton Coal Corp., Inc., 1327 Comer Building, Birmingham, Ala.	East Opening Mine, Nortonville, Ky.	1057	Sterling S. Lahier, Jr.
	Crabtree Strip Mine, Ilsley, Ky.	2005	
Pacific Coal Company, Route #1, Central City, Ky.	Pacific	64	C. D. Glass, Sr.
	Lakeside #1	955	
	Lakeside #2 Mercer, Ky.	955	

Mines in Government possession 15 November 1946—Continued

CMA AREA II, DISTRICT #9—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Pan Maw Coal Co., Madisonville, Ky.	Pan Mau Coal Co., Madisonville, Ky.	2034	L. J. Montgomery.
Phelps Coal Co., Prentiss, Ky.	Phelps Coal Co., Prentiss, Ky.	38	Everett Phelps.
Pine Hill Mining Co., RFD #3, Madisonville, Ky.	Pine Hill, Madisonville, Ky.	320	J. W. Wright.
Pond River Collieries, Box 192, Madisonville, Ky.	Pond River Collieries, Madisonville, Ky.	1073	L. R. Chapman.
Pond Valley Coal Co., P. O. Box 901, Drakesboro, Ky.	Pond Valley Coal Co., Drakesboro, Ky.	24	J. A. Cooke.
Providence Coal Mining Co., 100 Broadway, Providence, Ky.			Arthur L. Donan.
Scott & Latham, White Plains, Ky.	Scott & Latham, Depoy, Ky	2046	Lelon Latham.
Shearn Coal Co., 942 Cotton Belt Bldg., St. Louis, Mo.	Belcano, Belton, Ky.	1023	Clyde E. Pratt.
Smith & Smith, Box 196, Greenville, Ky.	McNary, McNary, Ky.	2020	R. D. Smith.
W. A. Wickliffe Coal Co., Greenville, Ky.			
Williams Coal Company, Crofton, Ky.	Williams Mine, Crofton, Ky.	87	Justin Potter.

CMA AREA II, DISTRICT #13

Acton Coal Co., Route #1, Helena, Ala.	Mine #1 (operated by Mize & Love).		
	Mine #2 (operated by Campbell & Harris).		
	Mine #3 (operated by Campbell & Harris).		
	Mine #4 (operated by Campbell & Harris).		
	Mine #5 (operated by Wesson & Parsons).		
	Mine #6 (operated by Joe Holt).		
	Mine #7 (operated by Frank Murphy).		
	Mine #8 (operated by Mize & Love).		
	Mine #9 (operated by Lawrence & Love).		
	Mine #10 (operated by Ed Russell).		
	Mine #11 (operated by Reese McClinton).		
Adams, Rowe & Norman, Inc., 729 Brown Marx Bldg., Birmingham, Ala.			E. J. Rowe.
Alabama By-Products Corp., P. O. Box 354, Birmingham 1, Ala.	Barney Mine, Cordova, Ala.	42	J. W. Porter.
	Bradford Mine, Dixiana, Ala.	77	
	Colta Mine, Flat Creek, Ala.	48	
	Labuco Mine, Labuco, Ala.	52	
	Praco Mine, Praco, Ala.	54	
	Samoset Mine, Dora, Ala.	37	
Alabama Power Co., 600 North 18th St., Birmingham 2, Ala.	Gorgas Mine, Gorgas, Ala.	1745	Thomas W. Martin.
J. C. Atkins, R. F. D. #2, Carbon Hill, Ala.	Kenshaw Mining Co., Route #2, Carbon Hill, Ala.	35	J. C. Atkins.
Averill Sanders Coal Co., Dora, Ala. (230) B			
Bessemer Coal, Iron & Land Co., 1312 First National Bldg., Birmingham 3, Ala.	Belle Ellen, Belle Ellen, Ala.	3	W. C. Hutchinson.
Birmingham Water Works Co., 2114 N. 1st Ave., Birmingham 3, Ala.	Cahaba #3, Birmingham Ala.		Alfred D. Norris.
Black Creek Coal Co., 729 Brown-Marx Bldg., Birmingham, Ala.			E. Allen Rowe.
Black Creek Coal & Coke Co., Thermal Via, Trafford, Ala.	Thermal #1, Trafford, Ala.	78	Priestley Toulmin, Jr.

Mines in Government possession 15 November 1946—Continued

CMA AREA II, DISTRICT #13—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Black Diamond Coal Mng. Co., Comer Bldg., Birmingham, Ala.	Blocton #9, West Blocton, Bibb County, Ala.	9	C. S. Blair.
	Black Diamond, Black Diamond, Jefferson Co., Ala.	67	
	Blue Creek, Blue Creek, Jefferson Co., Ala.		
	Johns, Johns, Jefferson Co., Ala.		
Boothton Coal Mining Co., Boothton, Ala.			D. A. Thomas.
Brilliant Coal Co., 1st National Bldg., Birmingham 3, Ala.	Brilliant, Brilliant Ala	18	David Roberts, Jr.
Brinson Coal & Clay, Cordova, Ala	Calumet, Calumet, Ala	32	Carl L. Brinson.
Brookside-Pratt Mining Co., 2203 Comer Bldg., Birmingham, Ala	Blossburg "E", Blossburg, Ala.	71	A. R. Long.
	Lindbergh, Adamsville, Ala., R. F. D. #1.		
	Warrior River, Carbon Hill, Ala.		
	New River, Winfield, Ala (R. F. D. to New River).		
	Deepwater, Nauvoo, Ala		
George Bryant, Route #3, Whitwell, Tenn.			
J. H. Busby, 1006 First Nat'l Bank Bldg., Birmingham 3, Ala.			
C & A Coal Co., 2019 1st Avenue N., Birmingham, Ala.			
John Calvert, Route #1, Trafford, Ala. (2200-B).			
T. L. & T. H. Carmichael, R. F. D. No. 2, Box 72, Cordova, Ala.			
Walter Clements, Soddy, Tenn	Mermanan Soddy Mine, Soddy, Tenn.		Walter Clements.
Colonial Coal & Coke Co., Pratt City, Ala.	Pratt Slope #4, Pratt City, Ala.	2075	David Brown.
Consolidated Coal Co., 2109 3rd Avenue North, Birmingham, Ala.			Mr. Dudrill.
Crenshaw Coal Co., Dora, Ala			
Davidson Coal Co., R. F. D. #1, Adamsville, Ala.	Davdison, Rt. 1, Adamsville, Ala.	311	H. S. Davidson.
DeBardeleben Coal Corp., Transportation Bldg., 2201 First Avenue, Birmingham 3, Ala.	Littleton, Littleton, Ala	1662	Henry T. DeBardeleben.
Disney Coal Co., Northport, Ala.	Tidewater, Peterson, Ala	2109	A. H. Disney.
Franklin Coal Mining Co., 806 Protective Life Bldg., Birmingham 3, Ala.			
Franklin & Tucker, Sumiton, Ala. (2200-B).			
Galloway Coal Mining Co., Inc., Carbon Hill, Ala.			
Geary-Harrison & Nunley, Palmer, Tenn.	Geary & Harrison, Palmer, Tenn.		
Glen Allen Coal Co., Glen Allen, Ala	Purity, Glen Allen, Ala		
Goforth Coal Co., Route #1, Whitwell, Tenn.	Goforth #3, Whitwell, Tenn		
	Griffith #3, Whitwell, Tenn		
	Clyde Rounsville, Whitwell, Tenn.		
	Goforth Mines #5, Daus, Tenn.		
J. C. Golden, Dora, Ala. (2200-B)	Mine #1, Dora, Ala		J. C. Golden.
Harris Coal & Clay Co., Cordova, Ala			
Hills Creek Coal Co., 809 Protective Life Bldg., Birmingham, Ala.	Hills Creek, Blocton, Ala	11	V. P. Terry.
Jagger Coal Co., Route #3, Box 146, Jasper, Ala.	Jagger Coal Co., Jasper, Ala		Herbert Taylor.
Layton Coal Co., Box 153, Dora, Ala	Layton Mine, Dora, Ala	1523	J. L. Layton.
Lehigh Coal Co., R. F. D. #1, Trafford, Ala.	Lehigh, Lehigh, Ala	75	Priestley Toulmin, Jr.
Little Cahaba Coal Co., Piper, Ala			
Little Gem Coal Co., First National Bldg., Birmingham 3, Ala.			
E. E. Lollar, Brookside, Ala	Colbur, Brookside, Ala		E. E. Lollar.
	Pickle, Brookside, Ala		
	Jones, Brookside, Ala		
	Odon, Brookside, Ala		

Mines in Government possession 15 November 1919—Continued

CMA AREA-II, DISTRICT #13—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Mammoth Coal Mining Co., Box 849, Jasper, Ala.	Mammoth Coal Mining Co., P. O. Box 849, Jasper, Ala.	1417	W. W. Bankhead.
Marigold Coal Mining Co., 114 W 11th Street, Kansas City, Missouri.			
Marion-Bledsoe Coal & Coke Co., Pikeville, Tenn.	Mine #175, Route #2, Pikeville, Tenn.		R. E. Mingher.
Moss & McCormack Coal Co., Inc., 1902 First National Bldg., Birmingham 3, Ala.	Jagger Mine, Nauvoo, Ala.	2031	Howard Moss.
Moss & Thornton, P. O. Box 577, Jasper, Ala. (2200-B).	Radiant, Nauvoo, Ala. Carbon, Warrior, Ala.	15 76	
Naramore Coal Co., Cordova, Ala.	New Riceton, Cordova, Ala.	1701	W. A. Naramore.
New Castle Coal Co., First National Bldg., Birmingham 3, Ala.	New Castle #2, Newcastle, Ala.	47	C. McCormack.
Paramount Coal Co., 2300 Fifth Ave., South Birmingham, Ala.	Paramount #7-10, Helena, Ala.	58	T. D. Abernathy.
Piedmont Coal Co., Route #1, Empire, Ala.	Paramount #12, Helena, Ala	2180	
Railway Fuel Co., Transportation Bldg., Birmingham 3, Ala.	Johnson #1, Dora, Ala		C. Cooley.
Republic Pratt Coal Co., 617 First Nat'l Bank Bldg., Birmingham, Ala.	Farrish Mine, Parrish, Ala	50	N. C. Kieffer.
Republic Steel Corp., Republic Bldg., Cleveland, Ohio (2200-B).	Sayreton #1		B. H. McCrackin.
	Sayreton #2 Sayreton, Ala.		
	Virginia, Virginia, Ala.	1526	
	Sayre	1527	
	Sayre Strip Sayre, Ala.		
Roden Coal Co., 1201 3rd Avenue, No., Birmingham, Ala.			
A. C. Rounsaville Coal Co., R. F. D. #1, Jasper, Tenn.			
Sillavan Coal Co., Jasper, Ala.	Mine #1		K. H. Sillavan.
	Mine #3 Jasper, Ala.		
Sloss-Sheffield Steel & Iron Co., 3131 First Avenue, No., Birmingham 2, Ala.	Flattop Coal Mine, Flattop, Ala.	49	Hugh Morrow.
	Lewisburg Coal Mine, Lewisburg, Ala.	46	
	Bessie Coal Mine, Maben, Ala.	1591	
Walter E. Smithers, Summit #2 Mine, Dora, Ala.			
Southern Cotton Oil Co. (Alta Coal Division), 2109 3rd Ave., North, Birmingham, Ala.	Summit Mine #2, Sumiton, Ala.	1672	W. E. Smithers.
Stith Coal Co., 616-17-18 First Nat'l Bldg., Birmingham 3, Ala.	America #5, America, Ala.	1433	J. R. Wilson.
Tennessee Coal, Iron & R. R. Co., Brown Marx Building, Birmingham 3, Ala.	Aldridge Shaft, America, Ala	31	
	Hamilton, Box BB, Pratt City, Ala.	51	Robert Gregg.
	Wylam, Box 270, Fairfield, Ala.	66	
	Docena, R. F. D. #2, Adamsville, Ala.	61	
	Edgewater, R. F. D. #8, Box 391, Wylam, Ala.	63	
	Short Creek, Box BB, Pratt City, Ala.	1724	
Tennessee Consolidated Coal Co., Tracy City, Tenn.	Tennessee Consolidated Coal Co. (Palmer Mine). Whitwell Coal Corporation, (Whitco Mine), Tracy City, Tenn.		S. C. Hampton.
Tennessee Products Corp., American Nat'l Bank Bldg., Nashville, Tenn.	Reel's Cove Mine, Whitwell, Marion County, Tennessee	2021	Carl McFarlin.
Tombrello Coal Co., Inc., Cardiff, Ala.	Brazil Hollow, Cardiff, Ala.	383	Sam Tombrello.
Trussell & Sons Coal Co., Porter Street, Winchester, Tenn.	Udora #1, Udora, Ala.	1706	Ole Trussell.
Twin Seam Mining Co., 6 First Nat'l Bank Bldg., Tuscaloosa, Ala.	Mine #5, Searles, Ala.	40	J. N. Brook.
	Kellerman Mine, Kellerman, Ala.	1445	
Whitwell Coal Corp., Tracy City, Tenn.	Whitwell Coal Corp. (Whitco Mine), Tracy City, Tenn.		S. C. Hampton.

Mines in Government possession 15 November 1946—Continued

CMA AREA II, DISTRICT #13—Continued

Minifig company and address	Mine name and address	Index No.	Operating manager
D. F. Winn, Goodsprings, Ala	Winn, Aldridge-Cordova Road, Alabama.	668	D. F. Winn.
Woodward Iron Co., Woodward, Ala	Dolomite Mine, Woodward, Ala.	62	H. A. Berg.
	Mulga Mine, Woodward, Ala	64	

CMA AREA III, DISTRICT #3

Robert Gage Coal Company, South Euclid Avenue, Bay City, Michigan.	Unionville Mine #10, Unionville, Michigan.	.....	John A. Coryell.

CMA AREA III, DISTRICT #10

Beaucoup Coal Co., Inc., R. F. D. #4, Pinckneyville, Ill.	.....	.....	Hauck Taylor.
Beli & Zoller Coal & Mining Company, 307 N. Michigan Avenue, Chicago, Ill.	Mine No. 1, Zeigler, Ill	191	W. P. Young.
	Mine No. 2, Zeigler, Ill	192	
Beveridge Coal Co., P. O. Box 266, Sparta, Ill.	Beveridge Coal Co., Mine #2, Sparta, Ill., Box 266.	1125	Hector Beveridge.
Blue Hill Coal Co., 804 S. Vicksburg, Marion, Ill.	Orchard, Pittsburg, Ill	92	W. P. Hill.
Blue Lake Coal Co., Catlin, Ill	Blue Lake Coal Co., Catlin, Ill.	1632	C. W. Thomas.
Bois Coal Co., Dubois, Ill	Kuhn Mine, Dubois, Washington County, Illinois.	16	John Waligorski.
Centralia Coal Co., 307 North Michigan Avenue, Chicago 1, Ill.	Mine #5, Centralia, Ill	29	H. F. McDonald.
Chicago, Wilmington & Franklin, Coal Company, 332 South Michigan Ave., Rm. 407, Chicago 4, Ill.	Orient, Orient, Ill	124	George B. Harrington.
	New Orient, West Frankfort, Ill.	108	
Citizen's Coal Co., Breese, Ill	East Breese, Ill	43	F. B. Lieman.
Citizens Mining & Sales Co., 507 Central Nat'l. Bank Bldg., Peoria 2, Ill.	.....	.....	John Bintges, Jr.
Consolidated Coal Co., Railway Exchange Bldg., St. Louis, Mo.	Buckhorn Mine, Herrin, Williamson County, Ill.	18	W. J. Jenkins.
	Lake Creek Mine, Herrin, Williamson County, Ill.	2001	
	Mine #20, Nason, Jefferson County, Ill.,		
Crain Coal Co., Percy, Ill	Crain Coal Co., Percy, Ill	34	Sig. Schrader.
Cutler Coal Co., Inc., Cutler, Ill			Andy Pugh.
Delta Collieries Corp., 430 Big Four Building, Indianapolis, Ind.	Delta Mine, Box 151, Marion, Ill.	1561	J. B. F. Melville
Down State Coal Co., P. O. Box 269, Marion, Ill.	Admiral Mine #1, Energy, Ill.	2020	G. C. Skinner.
Eddy Coal Co., Centralia, Ill			Bryan Eddie.
Edgar County Coal Co., Route #3, Paris, Ill.	Edgar County Coal Co., Paris, Ill.	961	A. J. Fourtuna.
Fairview Collieries Corp., 165 S. Meridian Street, Indianapolis, Ind.	Flamingo, Fairview, Ill	1450	James B. F. Melville.
Franklin County Coal Corp., LaSalle Street, Chicago, Ill.	135 South Royalton #7, Royalton, Ill.	.....	151 E. R. Kegler.
	Energy #5, Herrin, Ill	44	
Freeman Coal Mining Corp., 120 W. Adams Street, Chicago 3, Ill.	Freeman Mine #54	.....	J. Roy Browning.
	Seymour Mine #55, Herrin, Ill.	.....	
French Coal Co., R. R. #4, Streator, Ill	French Coal Co., Streator, Ill.	535	John McNeil.
G & M Coal Co. (Ghisbaudy Nore), 225 Elk North Street, Westville, Ill.	Mine #1475, R. R. #1, Catlin, Ill.	.....	Martin Mackovic.
Knoxville Mining Co., Knoxville, Ill	Knoxville Mining Co., Knoxville, Ill.	598	Carl Bowman.
Lemon & McKelvey Coal Co., R. F. D. #3, Sparta, Ill.	Mine #1127, R. F. D. #3, Sparta, Ill.	.....	G. A. Lemon.
Little John Coal Co., 1016 Merchants Bank Building, Indianapolis, Ind.	Little John Mine, Victoria, Ill.	84	R. H. Sherwood.
Little Sister Coal Corp., 310 S. Michigan Avenue, Chicago 4, Ill.	Little Sister, St. David, Ill	87	William H. Cooke.
McLaren Coal Co., Marion, Ill. (taken over by P. R. S., Inc., Carterville, Ill.).	McLaren #1, Carterville, Ill	94	W. S. McLaren.
Marion County Coal Mining Co., Box 421, Centralia, Ill	Glenridge, Centralia, Ill	58	Bert Jolliff.

Mines in Government possession 15 November 1946—Continued

CMA AREA III, DISTRICT #10—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Middle Road Coal Co., R. R. #1 Farmington Road, Peoria, Ill.	Middle Road Coal Co., R. R. #1 Farmington Road, Peoria, Ill.	766	Leroy Farrow.
Midland Electric Coal Corp., 1300 Fletcher Trust Bldg., Indianapolis, Ind.	Atkinson Mine, Atkinson, Ill.	2	T. C. Mullins.
	Middle Grove Mine, Farmington, Ill.	95	
	Rapatee Mine, Farmington, Ill.	1517	
Moffat Coal Co., 172 W. Broadway, Sparta, Ill.	Moffat, Sparta, Ill	99	J. D. Moffat.
Morgan Coal Co., 19 W. 38th Street, Indianapolis, Ind. (also in D-9 and D-11).	Bryant, Lenastown, Ill	1485	Fred C. Morgan.
Moren Coal Co., 302 E. Jackson, Marion, Ill.	Moren, R. R. #2 Marion, Ill	1201	L. C. Boatright.
Morris Coal & Mining Co., Box 311, Morris, Ill.	Morroco, Box 311, Morris, Ill.	503	Ralph C. McElvain.
New Watson Coal Co., 907 N. Garfield, Marion, Ill.	New Watson Coal Co., Energy, Ill.	109	Kenneth McDonald.
Northern Illinois Coal Corp., 310 South Michigan Avenue, Chicago 4, Ill.	Mine #10, Wilmington, Ill	189	Thomas C. Mullins.
Northwestern Illinois Coal Corp., 310 South Michigan Avenue, Chicago 4, Ill.	Northwestern Illinois Coal Corp., Morris, Ill.	2016	Thomas C. Mullins.
Oakwood Coal Co., Route #1, Oakwood, Ill.	Oakwood Coal Co., Oakwood, Ill.	1015	Romeo Zamberletti.
Old Ben Coal Corp., 230 Clark Street, Chicago 4, Ill.	Old Ben No. 8	118	D. W. Buchann.
	Old Ben No. 9 West Frankfort, Ill.	2006	
	Old Ben No. 11, Christopher, Ill.	119	
	Old Ben No. 14, Buckner, Ill.	120	
	Old Ben No. 15, West Frankfort, Ill.	121	
Osage Coal Co., Box #12, Ottawa, Ill.	Osage Coal Co. Mine #1, Ottawa, Ill.	125	George E. Nettels.
P. I. S. Incorporated, Carterville, Ill. (took over McLaren Coal Co.).			
Peabody Coal Co., 231 LaSalle Street, Chicago 4, Ill (also in D-7).	Mine No. 7, Kincaid, Ill	63	S. Peabody.
	Mine No. 8, Tovey, Ill	64	
	Mine No. 9	65	
	Mine No. 58, Taylorville, Ill.	66	
	Mine No. 14, DuQuoin, Ill.	91	
	Mine No. 18, West Frankfort, Ill.	9	
	Mine No. 47, Harco, Ill	62	
	Mine No. 53		
	Mine No. 57	25	
	Mine No. 59, Springfield, Ill.	132	
	Carter Processing Plant, Kincaid, Ill.	27	
Pekin Coal Mining Co., E. Broadway, Pekin, Ill.	Pekin Coal Mining Co., Pekin, Ill.	819	C. R. Janssen.
Peru Deep Vein Coal Co., c/o United Coal Co., 112 E. 5th Street, Peru, Ill.	Blackhawk #3, 1411 Water Street, Peru, Ill.	73	E. E. Alger.
Pioneer Coal Co., 310 National Bank Bldg., Pittsburg, Kansas (also in D-15).	Pioneer Mine #2, Sheffield, Ill.	1537	H. H. Spencer.
Pschirrer & Sons Coal Co., R. R. #4, Canton, Ill.	Kildee #3, R. R. #4, Canton, Ill.	78	A. R. Pschirrer.
Pure Coal Company, Beckemeyer, Ill.	Pure Coal Co., Beckemeyer, Ill.	6	D. W. Beggs.
Pyramid Coal Corp., 230 N. Michigan Avenue, Chicago 1, Ill. (also in D-41).	Pyramid Mine, Pinckneyville, Ill.	142	Hubert E. Howard.
Rock Island Improvement Co., 139 W. Van Buren Street, Chicago, Ill.	Mine No. 1, Box 277, Peoria, Ill.	81	James Hope.
Smith Coal Co., Marissa, Ill.	"O-Kay" Mine, Marissa, Ill	114	George E. Smith.
Solar Mining Co., 307 N. Michigan Avenue, Chicago 1, Ill.			Frank Kolbe.
Spring Valley Coal Mining Co., R. R. #1, Box 75-B, Spring Valley, Ill.	Mine #3, Spring Valley, Ill		B. De Filippe.
Sunrise Coal Co., Cambria, Ill.	Sunrise No. 2, Cambria, Ill.	1225	W. H. Johns.
W. G. Sutton, Box 207, Minonk, Ill.			W. G. Sutton.
Tilton Mining Co., 6. No. Vermilion Street, Danville, Ill.	Tilton Mining Co., Danville,	9 171	William A. Martin.
Truax-Traer Coal Co., 310 S. Michigan Ave., Chicago 4, Ill. (also in D-8).	Flatt, Flatt, Ill	46	A. H. Truax.
	Burning Star, Elkville, Ill	49	

Mines in Government possession 15 November 1946—Continued

CMA AREA III, DISTRICT #10—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Triple "S" Mines, R. R. #1, Cuba, Ill	Triple "S" Mines, Cuba, Ill	738	David E. Rowland.
Union Coal Co., 112 E. 5th Street, Peru, Ill.	Union, 112 E 5th Street, Peru, Ill.	175	John J. Walsh.
Union Colliery Co., 606 Union Electric Bldg., 315 N. 12th Blvd., St. Louis, Mo.	Kathleen Mine No. 1, Dowell, Ill.	77	J. W. McAfee.
	Kathleen Mine No. 2, DuQuoin, Ill.		
United Electric Coal Co., 307 N. Michigan Avenue, Chicago 1, Ill.	Buckheart Mine, Canton, Ill	17	Frank F. Kolbe.
	Cuba Mine, Box 166, Cuba, Ill.	35	
	Fidelity Mine, Du Quoin, Ill	47	
	Red Ray, Freeburg, Ill	145	
	Solar, Rushville, Ill	1353	
United States Coal & Coke Co., 1315 Frick Building, Pittsburgh, Pa. (also in D-7 and D-8).	Mine No. 21, Bunsenville, Ill		Harry N. Moses.
Valier Coal Co., 547 W. Jackson Blvd., Chicago, Ill.	Valier No. 1, Valier, Ill	176	T. J. Thomas.
Wallace Coal Co., Bank of Marion Bldg., Marion, Ill.	Wallace Coal Co., Bank of Marion Bldg., Marion, Ill.	182	George A. Wallace.
Wilkins & Biggs Coal Co., 106 E. Boulevard, Marion, Ill.	Wilkins & Biggs Coal Co., Marion, Ill.	2002	Arleigh Wilkins.
Wilmington Coal Mining Corp., Box 311, Morris, Ill.	Braidwood, Box 311, Morris, Ill.	515	Ralph C. McElvain.

CMA AREA III DISTRICT #11

Ayrshire Collieries Corp., 105 S. Meridian St., Indianapolis, Ind.	Ayrshire, Box 128 Princeton-Ayrshire, Oakland City, Ind.	5	J. B. F. Melville.
	Patoka, Box 128 Princeton-Ayrshire, Oakland City, Ind.	41	
	Clinton, Box 176 Brazil-Clinton, Clinton, Ind.	22	
	Chinook, Box 8, Brazil-Clinton, Staunton, Ind.	121	
Big Bend Collieries, Inc., Box 293, Brazil, Ind.	Big Bend Collieries, Inc	7	Frampton Rockhill.
	Birch Creek Coal Co., Inc., Brazil, Ind.	8	
Big Oak Coal Co. (Andrew Marcinko), Blanford, Ind.	Big Oak Coal Co., Blanford, Ind.	988	Andrew Marcinko.
Black Hawk Coal Corp., 111 North 7th St., Terre Haute, Ind.	Black Hawk, R. R. #4, Terre Haute, Ind.	10	Henry P. Smith.
Blackfoot Coal & Land Corp., 907-11 Citizens Bank Bldg., Evansville, Ind.	Blackfoot Coal & Land Corp., Oakland City, Ind.	9	Charles C. Kerwin.
Walter Bledsoe & Company, Merchants National Bank Bldg., Terre Haute, Ind.	Saxton Mine, North 13th Street Road, Terre Haute, Ind.	75	W. S. Webster.
Booneville Coal Sales Corp., 101½ N. Third Street, Booneville, Ind.			
Brazil Block Coal & Clay Co., Inc., 125 S. Walnut Street, Brazil, Ind.	Brazil Block Mine, Carbon, Ind.	14	Otto W. Underwood.
Briggs Coal Co. (George W. Briggs, Sr.), R. F. D. No. 3, Oakland City, Ind.			George W. Briggs, Sr.
Butterman Mining Co., R. F. D. No. 3, Rockville, Ind.	Butterman, R. R. #3, Rockville, Ind.	447	Lee Ray Butterman.
Cedar Valley Mining Corp., 610 Tribune Building, Terre Haute, Ind.	Cedar Valley, Mackey, Ind	2010	Ernest Butterman.
Central Indiana Coal Co., 1016 Merchants Bank Bldg., Indianapolis, Ind.	Nottingham, Linton, Ind	111	R. H. Sherwood.
Chesser Coal Corp., R. R. No. 2, Washington, Ind.	Chesser, Washington, Ind	288	Faye R. Chesser.
Deep Rock Coal Co., Seelyville, Ind	Deep Rock Coal Co., Seelyville, Ind.	153	Floyd R. Gibson.
Dugger Domestic Coal Co., R. F. D. No. 5, Sullivan, Ind.	Domestic, No. 2, R. F. D. No. 5, Sullivan, Ind.		D. M. Lippeatt.
Enos Coal Mining Co., 1101 Guardian Building, Cleveland 14, Ohio.	Enos, Oakland City, Ind	36	Fred S. McConnell.
G & F Corp., Hawkins Building, Brazil, Ind.	Hickory, Brazil, Ind	232	Lee Girton.
Steve Gall Coal Mine, Dugger, Ind			Steve Gall, Sr.
Gillespie Coal Co., Brazil, Ind. (2200-B)	Gillespie, Lyons, Ind		Curtis W. Gillespie.

Mines in Government possession 15 November 1946—Continued

CMA AREA III, DISTRICT 11—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Glendora Coal Co., 19 S. Sixth Street, Terre Haute, Ind.	Glendora #28, Sullivan, Ind	60	C. N. Templeton.
Hickory Grove Coal Mining Corp., 315 Alexander St., Rochester 4, N. Y.	Minnehaha, Cass Township, Sullivan County, Ind.	60	L. G. Fitch.
Ingle Coal Corp., R. F. D. No. 1, Elberfield, Ind.			David Ingle, Sr.
Knox Consolidated Coal Corp., 456 Consolidated Bldg., Indianapolis, Ind.	Mine No. 1, Bickwell, Ind	48	W. M. Zeller.
	Mine No. 2, Bickwell, Ind	49	
	Mine No. 5, Bickwell, Ind	1459	
Linton Summit Coal Co., 19 South Sixth Street, Terre Haute, Ind.	New Hope Mine, Linton, Ind.	63	C. N. Templeton.
	Regent Mine, Sullivan, Ind	2025	
Lone Star Coal Co., 609 Tribune Building, Terre Haute, Ind.	Lone Star, Staunton, Ind	55	Leo Girton.
	Royal Splint, Fontanet, Ind	103	
	Dixie Line, Ehimandale, Ind	118	
Lucky Strike Mining Co., Inc., P. O. Box 233, Boonville, Ind.	Lucky Strike Mine, Boonville, Ind.	57	R. H. Manny.
Marah Hill Super Block Coal Co., 8 South Michigan Avenue, Chicago, Ill.	Marah Hill No. 1, Dale, Ind.	58	Harold D. Wright.
Maumee Collieries Co., 321 Ohio Street, Terre Haute, Ind.	Commodore, Clay City, Ind	26	Hugh B. See.
	Mine No. 17, Clay City, Ind	68	
	Mine No. 20, Terre Haute, Ind.	21	
	Mine No. 26, Linton, Ind	1294	
	Mine No. 27, Linton, Ind	2011	
	Mine No. 28, Linton, Ind	2012	
	Mine No. 29, Clay City, Ind	2026	
	Mine No. 30, Linton, Ind		
Morgan Coal Company, 19 W. 38th Street, Indianapolis, Ind. (also in D-9 and D-10).	King Man, Kingman, Ind	106	Fred C. Morgan.
Mt. Pleasant Mining Corp., R. R. No. 4, Terre Haute, Ind.	Mt. Pleasant Mining Corp., R. R. No. 4, Terre Haute, Ind.	1381	Gerald Denton.
Navel & West, R. F. D. No. 3, Rockville, Ind.	Wimmer Mine No. 2, Rockville, Ind.	1398	Thos. Navel.
North West Coal Corp., Blanford, Ind	North West Coal Corp., Blanford, Ind.	681	John D. Vrabus.
			Basil Hays.
North Wilfred Coal Co., R. F. D. No. 1, Shelburn, Ind.			
Princeton Mining Co., 111 No. 7th Street, Terre Haute, Ind.	Kings Mine, Princeton, Ind.	47	Henry P. Smith.
Public Service Company of Ind., Inc., 110 N. Illinois Street, Indianapolis, Ind.	Dresser Mine, Terre Haute, Ind.	1332	G. J. Oglesbay.
Pyramid Coal Corp., 230 No. Michigan Avenue, Chicago, Ill. (also in D-16).	Victory Mine, Seelyville, Ind	1354	Hubert E. Howard.
Rio Grande Coal Corp., R. D. #1, Brazil, Ind.	Mine No. 2, Brazil, Ind	271	J. F. Mershon.
Shasta Coal Corp., 230 No. Michigan Avenue, Chicago, Ill.	Shasta Mine, Bicknell, Ind	2014	Hubert E. Howard.
Sherwood Templeton Coal Co., 1016 Merchants Bank Building, Indianapolis, Ind.	Friar Tuck Mine, Linton, Ind.	108	R. H. Sherwood.
	Robin Hood Mine, Linton, Ind.	73	
H. S. Siepman, Coal Co., Coalmont, Ind.	Alum Cave, Coalmont, Ind	137	H. A. Siepman.
	Oak Leaf, Coalmont, Ind	65	
Sisters of Providence, St. Mary of the Woods, Indiana.	St. Marys Mine		Mother Mary Bernard.
Snow Hill Coal Corp., 410 Merchants Bank Bldg., Terre Haute, Ind.	Talleydale Mine, Box 808, Terre Haute, Ind.	90	W. S. Webster.
Sommerville Coal Co., Sommerville, Ind. (2300-B).			William E. Bowers.
Southern Indiana Mining Corp., 610 Tribune Bldg., Terre Haute, Ind.			Henry Zimmermann.
Spring Hill Mine, 1454 S. 17th Street, Terre Haute, Ind.			
Standard Materials Corp., 2300 Kentucky Avenue, Indianapolis, Ind.	Standard Mine No. 1, Box 92, Clinton, Ind.	1373	Christene McDougard.
Sunlight Coal Co., 310 S. Michigan Avenue, Chicago, Ill.	Sunlight Coal Co., Boonville, Ind.	87	T. C. Mullins.
Tecumseh Coal Corp., 310 S. Michigan Avenue, Chicago, Ill.	Tecumseh Coal Corp., Boonville, Ind.	105	T. C. Mullins.

Mines in Government possession 16 November 1946—Continued

CMA AREA III, DISTRICT #12

Mining company and address	Mine name and address	Index No.	Operating manager
Blackstone Coal Co., 96 University Avenue, Des Moines, Iowa.			V. P. Smith.
Blakesburg Deep Vein Coal Co., Blakesburg, Iowa.			R. A. Smith.
Central Service Co., 100 Maple Street, Des Moines 3, Iowa.	Central No. 6, 74th & Douglas Aye, Des Moines, Iowa.	261	Joseph Muelhaupt.
Dallas Fuel Co., 641 Insurance Exchange Bldg., Des Moines, Iowa.	Dallas, Granger, Iowa	11	B. J. Powers.
Graham Coal Co., Box 430, Albia, Iowa			J. E. King.
Hopkins Coal Co., 108 N. Lincoln Street, Colfax, Iowa.	Hopkins #4, Colfax, Iowa	338	R. E. Hopkins.
Jensen Coal Co., 310 Sixth Street, Des Moines, Iowa.	Fort Dodge Mine, Jensen #2 (Fraser) Mine.	519	G. B. Jensen.
Arch Jones Coal Co., Chariton, Iowa	Arch Jones Coal Co., Chariton, Iowa.	834	Arch Jones.
Merle-Hay Coal Co., Route #1 Merle Hay Road, Des Moines, Iowa.	#1 Beck Coal Mine, Route No. 1 Des Moines, Iowa.		N. D. Wilhite.
Midway Coal Co., R. F. D., Centerville, Iowa.			John McConville.
New Block Coal Co., 517 E. Walnut St., Centerville, Iowa.			Frank Casaly.
New Enterprise Coal Co., Rathbun, Iowa.	New Enterprise Coal Co., Rathbun, Iowa.	18	Joe Swab.
Old King Coal Co., E. Jackson Street, Centerville, Iowa.			M. M. VanDyke.
Pershing Fuel Co., 221 Iowa Building, Des Moines, Iowa.			Ralph Bannister.
Powell Coal Co., 1219 Southern Surety Bldg., Des Moines, Iowa.	Indiana Consolidated No. 3, R. F. D. #3 Chariton, Iowa.	28	Bert Powell.
Rathbun Coal Co., Rathbun, Iowa.			L. B. Harbour.
Shuler Coal Co., 507 Equitable Bldg., Des Moines, Iowa.	Shuler Mine, Waukee, Iowa	57	John D. Shuler.
Sunshine Coal Co., 118 N. 12th Street, Centerville, Iowa.	Sunshine No. 3 Sunshine No. 4	64	J. R. Hamm.

CMA AREA IV, DISTRICT #14

Alix Big Four Coal Co., Alix, Ark., (Operates New Alix Coal Co., Alix, Ark.)			
Arkansas Coal Mining Co., Box 292, Mansfield, Ark.			
Arkansas Stripping Co., Pyramid Bldg., Little Rock, Ark.	Rubaiyat, Clarksville, Ark.	1050	J. W. Bruton.
Barr Excelsior Coal Co., Hackett, Ark.	Barr #2, Hackett, Ark.	2	R. W. Barr.
J. M. Bates Coal Co., Hartford, Ark.	#2, Hartford, Ark	170	O. O. Nance.
Bernice Anthracite Coal Co., Russellville, Ark. (2200-B).	Bernice #4, Russellville, Ark	1022	J. G. Puterbaugh.
Big Four Coal Co., Bokoshe, Okla.			
Black Diamond Coal Co., Bokoshe, Okla.			
Bokoshe Coal Co., Bokoshe, Okla.	Bokoshe #3, Bokoshe, Okla.	622	C. R. Oglesby.
Boyd Excelsior Fuel Co., Box 372, Fort Smith, Ark.	Boyd Excelsior Mine, Fort Smith, Ark.	13	Degen Boyd.
Buck Creek Coal Mining Co., Cameron Coal Co., 1302 Commerce Bldg., Kansas City, Mo.	Cameron #2, Williams, Okla.	15	D. Durkee.
Collier-Dunlap Coal Co., Clarksville, Ark.	Collier-Dunlap, Clarksville, Ark.	21	H. W. Collier.
Cunningham Coal Co., Poteau, Okla.	Cunningham Coal Co. Mine, Poteau, Okla.	1042	C. Cunningham.
Davies & Swindle Coal Co., Bokoshe, Okla.	#3, Bokoshe, Okla.	621	T. E. Davies.
Dixie Two Coal Co., Box 546, Paris, Ark.	Horse Shoe, Paris, Ark.	52	B. C. Reed.
Excelsior Thin Vein Coal Co., Hackett, Ark.			
Clifford Gaither Coal Co., Poteau, Okla. (formerly Poteau Chief Mng. Co., Poteau, Okla.).	Victory Coal Co., Chief Mine, Poteau, Okla.	123	Thomas Harper, Esq.
Franklin County Coal Co., Ozark, Arkansas (leased to Peerless Coal Co., Greenwood, Ark.).			W. H. Lewis.

Mines in Government possession 15 November 1946—Continued

CMA AREA IV, DISTRICT #14—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
H. & H. Coal Co. (J. D. Hill), Paris, Ark.	Eureka, Paris, Ark.	132	J. D. Hill.
A. M. Hobbs Coal Co., Bloomsford, Ark.			
Jackson & Squire Co., Mansfield, Ark.	Huntington, Huntington, Ark.	1004	J. J. Anderson.
	Coal Dale, Coal Dale, Ark.	1037	
Jewel Mining Co., 3740 E. 18th St., Kansas City, Mo.	Jewel, Paris, Ark.	55	George Coville, Jr.
Keener Coals, Inc., Bokoshe, Okla.	Keener #3, Bokoshe, Okla.	213	Raymond L. Ellis.
New Alix Coal Co., Alix, Ark. (Operated by Alix Big Four Coal Co., Alix, Ark.).			
New Matchless Coal Co., Rt. #1, Box 1, Poteau, Okla.			
New Shickley Mining Co., Paris, Ark.	Ideal #1 Mine, Paris, Ark.	53	A. J. Mitchell.
New Union Coal Co., Paris, Ark.	New Union Mine, Paris, Ark.	77	A. L. Mitchell.
E. H. Noel Coal Co., Box 716, Fort Smith, Ark.	Sun Excelsior, Fort Smith, Ark.	144	E. H. Noel.
Number Six Smokeless Coal Co., Altus, Ark.			
Oronogo Mutual Mng. Co., Oronogo, Mo.	Bates, Bates, Ark.	124	Guy H. Waring.
Panther Coal Co., Route 2, McCurtain, Okla.	Krisher #1, McCurtain, Okla.	177	Mathias Krisher.
Paris Coal Washery Inc., Paris, Ark.	Washery, Paris, Ark.	1000	B. C. Reed.
Paris Purity Coal Co., Box 406, Paris, Ark.			
Peerless Coal Co., Greenwood, Ark.	Peerless #4		W. H. Lewis.
Quality Coal Co., 310 Sage St., Poteau, Okla.	Quality #3, Poteau, Okla.	87	Tony Zagar.
Quality Excelsior Coal Co., Greenwood, Ark.	Quality, Greenwood, Ark.	89	Isaac Lewis.
Rock Island Coal Co., Rock Island, Okla.	Rock Island Coal Co., Rock Island, Okla.	203	H. F. McMahon.
Ruby Glow Mining Co., Box 31, Clarksville, Ark.	Ruby Glow, Clarksville, Ark.	206	W. C. Roberts.
Smokeless Coal Co., Midland, Ark.			
Smokeless Coal Co., Inc., Clarksville, Ark.			
Stewart Smokeless Coal Co., Denning, Ark.	#2, Denning, Ark.	104	Pete Stewart, Jr.
Superfuel Coal Co., Paris, Ark.			
Victor Coal Co., Paris, Ark.	Victor, Paris, Ark.	116	B. C. Reed.
Watson Coal Co., Paris, Ark.			
Wells Royal Coal Co., Poteau, Okla.	Dane, Poteau, Okla.	23	V. P. Sorrels.

CMA AREA IV, DISTRICT #15

A. and P. Coal Co., P. O. Box 55, Haileyville, Okla.			
Alston Coal Co., 217 National Bank Bldg., Pittsburg, Kansas.	Alston Coal Co., Mindenmines, Mo.	5	James F. Blann, Jr.
Apex Coal Co., 210 Globe Bldg., Pittsburg, Kansas.	Apex Mines, Pittsburg, Kansas.	6	L. E. Compton.
Atlas Coal Corp., Box 719, Henryetta, Okla.	Atlas Mine, Henryetta, Okla.	1312	Fred Steckelberg.
Ben Hur Coal Co., Box 839, Morgan Bldg., Henryetta, Okla.	Blackstone Mine, Henryetta, Okla.	16	R. E. Taylor.
Binkley Mng. Co. of Mo., 230 N. Michigan Ave., Chicago, Ill.	Bevier Mine, P. O. Box 223, Macon, Mo.	13	Hubert E. Howard.
Black Crown Coal Co., R. F. D. #1, Pittsburg, Kansas.	Black Crown #2, Pittsburg, Kansas.	2008	Henry Wilson.
Boothe Coal Co., Inc., Mosby, Mo.	Boothe #1, Mosby, Mo.	450	C. C. Tapp.
Cherokee Coal Co., Cherokee, Kansas.	Kruger Mine, Cherokee, Kansas.	71	Tony Blayic.
Clemens Coal Co., 312 Globe Bldg., Pittsburg, Kansas.	#23, Foxtown, Kansas.	33	George M. Mackie, Jr.
Coalton Coal Co., 414½ Main St., Henryetta, Okla.	#22, Mulbery, Kansas.	32	
Collins Coal Co., Box 275, Krebs, Okla.	Jealton, Henryetta, Okla.	34	D. L. Hughes.
Eagle Cherokee Coal Mng. Co., R. F. D. #3, Pittsburg, Kansas.	Collins Mine, Krebs, Okla.	35	L. F. Halstead.
	The Eagle Cherokee Coal Mining Co., P. O. Box 385, Pittsburg, Kansas.	47	W. G. Parrott.
Elmira Coal Co., Box 752, Excelsior Springs, Mo.			

Mines in Government possession 15 November 1946—Continued

CMA AREA IV, DISTRICT #15—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Julian Coal Mining Co., Arnote Bldg., McAlester, Okla.			
K. & L. Coal Co., Box 64, Haileyville, Okla.			
Kelly-Carter Coal Co., 217 National Bank Bldg., Pittsburg, Kansas.	Kelly-Carter Coal Co., Garland, Kansas.	147	James J. Blann, Jr.
Lightning Creek Coal Co., 209 Globe Bldg., Pittsburg, Kansas.	Lightning Creek Mine, Pittsburg, Kansas.	2010	L. E. Compton
McGrath Coal Co., Inc., 924 East 7th St., Pittsburg, Kansas (now operated by Yale Coal Co., R. F. D. #1, Pittsburg, Kans.).	McGrath #1, 924 E 7th St., Pittsburg, Kansas	2022	Glen D. Clark.
The Mineral Products Co., The National Bank Bldg., Kansas City 6, Mo.	Coal Recovery Hill, West Mineral, Kansas.	111	George Nettels.
Mosby Coal Co., Excelsior Springs, Mo.			
Muilen Coal Co., McAlester, Okla. (2200-B).			
Pioneer Coal Co., 310 National Bank Bldg., Pittsburg, Kansas (also in D-10).	Pioneer #3, P. O. Box 179, Nevada, Mo.	1621	H. H. Spencer.
The Pittsburg and Midway Coal Mining Company, 610 Dwight Bldg., Kansas City, Mo.	#15	109	George E. Nettels.
	#18 Central Cleaning Plant, West Mineral, Kansas.	158	
Quality Coal Co., Inc., c/o Sam Thornburg, Frontenac, Kansas.	#1, Arma, Kansas	120	Andrew Allan.
Robinson Coal Co., Box 168, Pleasonton, Kansas.			
Stark Coal, Inc., Box 689, Henryetta, Okla.	#2 Stable	121	Earl Wells.
	#3 Stable Henryetta, Okla.	2	
Warden-Pullen Coal Co., 323 W. Trudgeon St., Henryetta, Okla.	Waren, Henryetta, Okla.	133	Fred C. Pullen.
Windsor Coal Co., Inc., P. O. Box 189, Windsor, Mo.	#2, Newcastle, Mo.	1464	J. G. Poterbaugh.
Yale Coal Co., R. F. D. #1, Pittsburg, Kansas (took over McGrath Coal Co., Inc.).			

CMA AREA V, DISTRICT #16

Black Diamond Fuel Company, 1240 Walnut Street, Boulder, Colorado.	Black Diamond, Lafayette, Colorado.	104	James Bertotti.
Boulder Valley Coal Company, Security Life Building, Denver, Colorado.	Boulder Valley No. 3, Dacono, Colorado.	1006	Fred Nesbit.
	Centennial Mine, Louisville, Colo.	3	
C. H. & J. Coal Company, Frederick Colorado (Formerly: Jones, Hutchcraft & Ciocchetti Coal Co.).			
Capitol Coal Company, 16 Ferguson Building, Denver, Colorado.			
Clayton Coal Company, 616 Denham Building, Denver, Colorado.	Morrison Mine, Erie, Colo.	15	H. B. Crandell.
	Washington Mine, Erie, Colorado.	21	
Consolidated Coal & Coke Co., 416 Empire Building, Denver, Colorado.	Baum Mine, Dacono, Colorado.	1	Stanley Blose.
Graden Coal Company, 318 Walnut Street, Denver, Colorado.	Graden Mine, Frederick, Colorado.	121	William E. Russell.
Imperial Coal Company, 515 Denham Building, Denver, Colorado.	Imperial Mine, Erie, Colorado.	10	James Brennan.
Leyden Lignite Company, 801 Tramway Building, Denver 2, Colorado.	Leyden Mine, Jefferson County, Leyden, Colorado.	12	Harry F. Nash.
Louisville-Lafayette Coal Co., 716 Security Building, Denver, Colorado.	Hi-Way Mine, Louisville, Colo.	9	O. Yakes, Jr.
McNeil Coal Corporation, 819 Equitable Building, Denver 2, Colorado.	Sterling Mine, Dacono, Colo.	20	John E. McNeil.
National Fuel Company, 641 Equitable Bldg., Denver 2, Colorado.	Monarch Mine, Louisville, Colo.	13	B. A. Collingham.
	Eagle Mine, St. Vrains, Colo	6	
Pluto Coal Mining Company, 928 Tenth Street, Boulder, Colorado.	Pluto Mine, Superior, Colo.	130	George W. Cowdery.

Mines in Government possession 15 November 1946—Continued

CMA AREA V, DISTRICT #16—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Regal Coal Company (Louis Casper), 510 Cleveland Street, Lafayette, Colorado.			
Wm. E. Russell Coal Company, 318 Walnut Street, Denver, Colorado.	Crown Mine, Superior, Colo Russell Mine, Frederick, Colo.	133 18	William E. Russell.
Shamrock Coal Company, 810 14th Street, Denver, Colorado.	Shamrock Mine, Erie, Colorado.	19	E. G. Wahlen.

CMA AREA V, DISTRICT #17

The Alpine Fuel Company, 108 West Tomichi Street, Gunnison, Colorado.			
American Smelting & Refining Co., Cokedale, Colorado.	Bunsarbo Mine, Cokedale, Colo.	14	C. R. Garrett.
Bear Canon Coal Company, 112 E. Main Street, Trinidad, Colorado.	Bear Canan No. 6, P. O. Valorso, Colo.	9	William G. Plested.
Bear Coal Company, Somerset, Colorado.	Bear Mine, Somerset, Colo.	8	Tony Bear.
Berardi & Berta Coal Company, P. O. Box 31, Florence, Colorado.	Caldirola Mine, P. O. Box 31, Florence, Colorado.	236	Joe J. Berta & Steve Berardi.
Butte Valley Coal Company, Box 542, Walsenburg, Colorado.			
Caldirola Coal Company, Florence, Colorado (2200-B).	Canon Liberty, Florence, Colo.		C. J. Caldirola.
Calumet Fuel Company, 715 Judge Building, Salt Lake City, Utah.	Somerset Mine, Somerset, Colo. Calumet #2 Mine, Delcarbon, Colo.	72 18	Maroni Heiner.
Canon Black Diamond Coal Co., Box 66, Florence, Colo.	Canon Black Diamond Coal Mine, Florence, Colorado.	417	Gene Yellico.
Canon Chief Coal Co., 304 W. Third St., Florence, Colorado.	Canon Chief Coal Co., Florence, Colorado.	342	Dominic Moschetti.
Canon Monarch Coal Company, 521 E. Third Street, Florence, Colorado.	Canon National Mine, Florence, Colo.	215	F. A. Boitz.
Canon National Coal Company, Box 389, Florence, Colorado.	Canon National Mine, Florence, Colo.	239	F. A. Boitz.
Castle Coal Company, Box 197, Durango, Colorado.	Castle Coal Mine, Durango, Colo. Supreme Coal Co., Durango, Colo.	20	Otto Serroui.
Champion Coal Mining Company (Clement Audin & Son), Somerset, Colorado.	Hawks Nest, Somerset, Colo.	208	Clement Audin.
Clark Coal Company, Somerset, Colorado.	Edwards Mine, Somerset, Colo.	264	Paul R. Clark.
Colorado Fuel & Iron Corp., Continental Oil Bldg., Denver 2, Colo.	Frederick, Valdez, Colo Morley, Morley, Colo. Robinson #4, Farr, Colo. Kebler #2, Tiogo, Colo. Pictou, Pictou, Colo Rockvale #3, Canon City, Colo.	32 52 67 42 1011 68	J. S. Besser.
	Crested Butte, Crested Butte, Colo.	25	
Colorado & Utah Coal Co., 704 Boston Bldg., Denver 2, Colo.	Harris Mine, Mt. Harris, Colo.	38	W. J. Thompson.
The Colowyo Coal Co., 704 Boston Bldg., Denver 2, Colo.	Red Wing Mine, Axial, Colo.	362	W. J. Thompson.
W. D. Corley, Jr., 423 E. Cucharras St., Colorado Springs, Colo.			
Cribbs Goodman Coal Co., Box 390, Florence, Colo.	Rex Carbon, Florence, Colo.	349	E. B. Cribbs.
Dick Coal Co., Box 542, Walsenburg, Colo.			
Domestic Coal Co., 2325 Monaco Blvd., Denver, Colo.	Streeter Mine, Axial, Colo.	75	George C. Watson.
Double Dick Coal Co., Box 407, Florence, Colo.	Double Dick Coal Co., Florence, Colo.	382	Tony Sanlarell.
Dunn Coal Co., Box 272, Hayden, Colo. (2200-B)	Sheepy Cat Mine #2, Hayden, Colo.	487	Paul C. Fifield.
Edna Coal Co., Oak Creek, Colo.	Edna Mine, Oak Creek, Colo.	31	V. B. Smith.
Eureka Coal Co., 1017 E. Main St., Trinidad, Colo.	Anchor Mine, Bon Carba, Colo.	4	Lesh Abeyta.
Giordano Coal Co., 302 W. Ninth St., Walsenburg, Colo.			
Giuliano & Sons Coal Co., Box 108, Florence, Colo.	Cedar Canon, Florence, Colo.	21	Louis Giuliano.

Mines in Government possession 15 November 1946—Continued

CMA AREA V, DISTRICT #17—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Gordon Coal Co., Box 542, Walsenburg, Colo.			
Griffiths Coal Mining Co., 1024 Greenwood Avenue, Canon City, Colo.	Chandler Creek Mine, Canon City, Colo.	37	Elizabeth Griffiths.
Hall Bros. Coal Co., First National Bank Bldg., Trinidad, Colo.	Kenneth, Rugby, Colo	43	Frank H. Hall.
Hayden Coal Co., 920 First National Bank Bldg., Denver 2, Colo.	Hayden #3, Haybro, Colo	39	G. W. Harris.
Hesser & Gerner, Rusty Coal Mine, Steamboat Springs, Colo. (2200-B).			
Huerfano Coal Co., 746 Equitable Bldg., Denver 2, Colo.	Ludlow Mine, Ludlow, Colo	47	N. C. Anderson.
Juanita Coal & Coke Co., Bowie, Colo	King, Bowie, Colo	45	L. T. Rule.
Kerr Coal Co., Mesa County, Cameo, Colo.			
Keystone Coal Co., Security Life Bldg., Denver 2, Colo.			
Edward Lasnik, Hayden, Colo.			
Major Coal Co., Box 272, Walsenburg, Colo.			
Minnequa Coal Co., 648 Equitable Bldg., Denver 2, Colo.	Morning Glory Mine, Box 182, Walsenburg, Colo.	53	S. M. Thompson.
Moffat Coal Co., 506 G & E Bldg., Denver 2, Colo.	#2	51	B. W. Snodgrass.
	#3	58	
	Oak Creek, Colo.		
Oliver Coal Co., Box 36, Paonia, Colo.	The Oliver Mine, Paonia, Colo.	60	J. O. Hovgard.
Phelps Dodge Corporation (Stag Cannon Branch), Dawson, New Mexico.	Dawson #6, Dawson, New Mexico.	27	G. O. Arnold.
Ramsay Coal Co., P. O. Box "C," Hayden, Colo.			
Royal Gorge Coal Co., 107 South 4th St., Canon City, Colo.			
St. Louis, Rocky Mountain & Pacific Co. Investment Bldg., Raton, New Mexico.	Koehler Mine, Koehler, New Mexico.	518	J. van Houten.
	Van Houten Mine, Van Houten, New Mexico.	68	
	Brilliant #2 Mine, Brilliant, New Mexico.	77	
South Canon Mines, Glenwood Springs, Colo.	South Canon Mine #1	74	Rees Llufellyn.
	South Canon Mine #2		
	Glenwood Springs, Colo.		
Taylor Coal Mining Co., Box 149, Walsenburg, Colo	Rouse	49	Sam T. Taylor.
	Rapson	511	
	Cook	519	
	Box 149		
	Walsenburg, Colo.		
Thor Fuel Co., 1322 San Juan, Trinidad, Colo.	Thor Fuel Co., Route 2, Trinidad, Colo.	78	Eph Wagstoff.
Vanadium Corp. of America, Uravan, Colo. (2200-B).	Fiddling Bill, Naturita, Colo.	1002	D. W. Viles.
Vento Coal Co., 717 W. 31 St., Florence, Colo.			
Victor-American Fuel Co., E. & C. Bldg., Denver 2, Colo.	Delagua, Delagua, Colo	28	H. E. MacDonald.
	Pinnacle, Oak Creek, Colo	62	
	Wadge, Mt. Harris, Colo	82	
Victory Coal Co., 115 E. 8th St., Durango, Colo.	Victory Mine, Durango, Colo.	521	William Gerard.

CMA AREA V, DISTRICT #18

Albuquerque & Cerrilos Coal Co., Madrid, N. Mex.	Jones	11	Oscar Huber.
	Lar. b		
	#4		
	#8		
	Madrid, N. Mex.		
Biava Coal Co., Box 247, Gallup, N. Mex. (2200-B).	Biava Coal Co., Box 247, Gallup, N. Mex.	103	John A. Biava.
Defiance Coal Co., Box 446, Albuquerque, N. Mex.	Mentmore, Mentmore, N. Mex.	5	G. H. Larson.
Gallup Gamerco Coal Co., Gallup, N. Mex.			
Gallup Southwestern Coal Co., Box 670, Gallup, N. Mex.	Southwestern, Box 670, Gallup, N. Mex.	2	H. C. Stacher.
Mutual Coal Co., Box 887, Gallup, N. Mex.	Mutual Coal Co., Box 887, Gallup, N. Mex.	3	Dan Brunetta.

Mines in Government possession 14 November 1946—Continued

CMA AREA V, DISTRICT #19

Mining company and address	Mine name and address	Index No.	Operating manager
Big Horn Coal Co., Box 724, Sheridan, Wyo.	Big Horn Coal Mine #1, Box 724, Sheridan, Wyo.	231	R. J. Wardner.
Burnell Coal Mines, Gebo, Wyo.	Gebo #3	225	P. M. Burnell.
	Gebo #5	226	
	Gebo, Wyo.		
Colony Coal Co., 704 Boston Bldg., Denver 2, Colo.	Peacock, Rock Springs, Wyo.	18	W. J. Thompson.
Elk Mountain Coal Co., P. O. Box 1428, Boise, Idaho.	Dines, Dines, Wyo.	6	
Gunn-Quealy Coal Co., Quealy, Wyo.	Sweetwater #2, Quealy, Wyo.	28	L. M. Pratt.
	Gunn "C," Gunn, Wyo	3	
Kemmerer Coal Co., Frontier, Wyo.	Gomer	8	L. M. Pratt.
	Brilliant	2	
	Elkol	7	
	Frontier, Wyo.		
Lion Coal Corp., 1106 Continental Bank Bldg., Ogden, Utah.	Star, Rock Springs, Wyo.	23	A. B. Foulger.
Monolith Portland Midwest Co., 215 W. Seventh St., Los Angeles 14, Calif.	Hanna #2, Hanna, Wyo.	38	Coy Burnett.
Nugget Coal Co., 604 Patterson Bldg., Denver 2, Colo.	Nugget, Hanna, Wyo.	16	N. A. Swenson.
Rock Springs Fuel Co., P. O. Box 1045, Rock Springs, Wyo.	Kleen-Fyre	13	John Lucas.
	Premier	19	
	Superior, Wyo.		
Sheridan-Wyoming Coal Co., Inc., Monarch, Wyo.	Monarch	33	D. H. Pape.
	Miller	152	
	Monarch, Wyo.		
Storm King Coal Co., 360 Broadway, Sheridan, Wyo.	Storm King	160	William Patvaros.
	Black Diamond	132	
	360 Broadway, Sheridan, Wyo.		
The Union Pacific Coal Co., 1416 Dodge St. Omaha, Nebr.	Rock Springs No. 4	21	I. N. Bayless.
	Rock Springs No. 8	22	
	Rock Springs No. 11	243	
	Rock Springs, Wyo.		
	Reliance No. 1	20	
	Reliance No. 7	35	
	Reliance, Wyo.		
	Stansbury Mine, Stansbury, Wyo.	244	
	Winton Mine, Winton, Wyo	30	
	Superior D. O. Clark, Superior, Wyo.	5	
	Hanna No. 4A, Hanna, Wyo	10	

CMA AREA V, DISTRICT #20

Carbon Coal Co., P. O. Box 114, Scofield, Utah.	Carbon Coal Co., Scofield, Utah.	13	James Gable.
Chesterfield Coal Co., 101 Atlas Bldg., Salt Lake City, Utah.			
Columbia Steel Co., 235 Montgomery St., San Francisco, Calif.	Columbia Coal Mine, Columbia, Utah.	7	W. A. Ross.
Geneva Steel Co., P. O. Box 269, Salt Lake City, Utah.	Geneva Coal Mine, Horse Canyon, Emery County, Utah.	1001	Walther Matheslus.
Hi-Heat Coal Co., 911 Continental Bank Bldg., Salt Lake City 1, Utah.	Rains #2 Mine, Rains, Carbon Co., Utah.	17	R. H. Harmer.
Hudson Coal Co., 1011 Continental Bldg., Salt Lake City 1, Utah.	Sweet, National, Utah	23	V. W. Sweet.
Independent Coal & Coke Co., 1511 Walker Bank Bldg., Salt Lake City, Utah.	Aberdeen, Kenilworth, Carbon Co., Utah.	1	Walter F. Clarke.
Kaiser Co., Inc. (Iron & Steel Div.), Sunnyside, Utah.	Sunnyside Mine, Sunnyside, Utah.	206	A. B. Ordway.
Liberty Fuel Co., 402 Kearns Bldg., Salt Lake City, Utah.	Liberty Mine, Latuda, Carbon Co., Utah.	9	M. Weber.
Lion Coal Corp., 1106 First Security Bank Bldg., Ogden, Utah.	Wattis, Wattis, Utah	25	A. B. Foulger.
McGowan Coal Co., National, Utah	#1, Consumers, Utah	28	Terry McGowan.
Carl Nyman, National, Carbon Co., Utah.	National; National, Utah	179	Carl Nyman.
Pacific Coal Co., 404 Boston Bldg., Salt Lake City, Utah.	Maple Creek Mine, Standardville, Utah.	12	E. T. Llapis.
Peerless Sales Co., 1107 Newhouse Bldg., Salt Lake City, Utah.	Peerless Mine, Peerless, Carbon Co., Utah.	16	A. P. Cederlof.

Mines in Government possession 15 November 1946—Continued

CMA AREA V, DISTRICT #20—Continued

Mining company and address	Mine name and address	Index No.	Operating manager
Royal Coal Co., 818 Newhouse Bldg., Salt Lake City, Utah.	Royal Coal Co., Royal, Utah	19	L. E. Adams.
Spring Canyon Coal Co., 818 Newhouse Bldg., Salt Lake City, Utah.	Spring Canyon Coal Co., Spring Canyon, Utah.	20	L. E. Adams.
Standard Coal, Inc., 815 Newhouse Bldg., Salt Lake City, Utah.	Standard Coal, Inc., Standardville, Utah.	21	L. E. Adams.
United States Fuel Co., 921 Newhouse Bldg., P. O. Box 1769, Salt Lake City, Utah.	King Mine, Hiawatha, Utah	8	P. L. Shields.
Utah Co[illegible] Co., P. O. Box 555, Salt Lake City, [illegible]h.			
Utah Fue[illegible] Co., 715 Judge Bldg., Salt Lake City, Utah.	Castle Gate Mine, Castle Gate, Utah.	4	Moroni Heiner.
	Clear Creek Mine, Clear Creek, Utah.	6	
	Sunnyside Mine, Sunnyside, Utah.	22	
Western Coal Mining Co., 205 Pacific National Life Bldg., Salt Lake City, Utah (2200-B—appeared as Pacific Supply Cooperative).	Western Mine, Rains, Utah	1009	George A. Schultz.

CMA AREA V, DISTRICT #22

Bair-Collins Co., 29 Main St., Roundup, Mont.	Prescott Mine, Roundup, Mont.	11	G. E. Gildroy.
Brophy Coal Co., Red Lodge, Mont.	S. & S. Mine, Red Lodge, Mont.	15	James R. Brophy.
Jeffries Coal Co., Roundup, Mont.	Jeffries Carlson Mine, Roundup, Mont.	128	G. J. Jeffries.
Montana Coal & Iron Co., Box 1298, Billings, Mont.	Foster	4	J. M. Freeman.
	Smith	310	
	Washoe, Mont.		
Republic Coal Co., 2423 Southport Ave., Chicago, Ill.	Klein #2, Roundup, Mont.	8	J. T. Gillick.
Roundup Coal Mining Co., Box 98, Roundup, Mont.	Roundup #3, Roundup, Mont.	13	S. H. Clarke.
B. & R. Coal Co., Box 389, Renton, Wash.	Newcastle	104	Joe Baima.
	Issaquah	181	
	Box 389, Renton, Wash.		
Bellingham Coal Mines, Box 624, Bellingham, Wash.	Bellingham Coal Mine, Box 624, Bellingham, Wash.	3	E. P. Lucas.
Bianco Coal Mines, 3333 Cascadia Ave., Seattle, Wash.	Queen #1, Issaquah, Wash.	106	Fred Bianco.
Big Four Coal Co., Palmer, Wash.	Elk, Palmer, Wash.	14	Peter Pergolios.
Carbon Fuel Co., P. O. Box 86, Cumberland, Wash.	Bayne, Cumberland, Wash.	2	James Bolde.
Jonesville Coal Co., Inc., P. O. Box 902, Roslyn, Wash.	Mine #4, Roslyn, Wash.	159	William C. Shaw.
Monarch Coal Mining Co., Route 1, Box A-223, Centralia, Wash.	S. W. Washington, Rt. 1, Box A-223, Centralia, Wash.		George W. Sheatsley.
Northwestern Improvement Co., Coal Department, Roslyn, Wash.	Roslyn #3		Thomas Murphy.
	Roslyn #5		
	Roslyn #9		
	Ravensdale, Wash.		
The Pacific Coast Coal Co., Pacific Coast Terminals, Foot of Main St., Seattle 4, Wash.	Black Diamond Mine, Black Diamond, Wash.	32	C. R. English.
Palmer Coking Coal Co., Inc., Palmer, Wash.			
Penn-Bucoda Coal Co., 417 S. W. Stark St., Portland, Ore.	Bucoda #1, Bucoda, Wash.	1003	Robert Fromm.
Renton Mining Co., Inc., Box 596, Renton, Wash.	Talbot Mine, Box 596, Renton, Wash.	150	Robinson Wilson.
Roslyn-Cascade Coal Co., 1404 Commercial St., Bellingham, Wash.	Roslyn-Cascade, Ronald, Wash.	29	Charles F. Larrabee.
Springbrook Mining Co., 400 Cedar St., Renton, Wash.	#3, Spring Glen, Wash.	33	A. F. Claut.
Strain Coal Co., 414 Old Times Bldg., Seattle, Wash.	Newcastle (Coal Creek), Box 209, Renton, Wash.	22	William Strain.
	Tono Mine, Rt. 2, Box 500, Centralia, Wash.	34	
Wilkeson-Wingate Coal Co., Wilkeson, Wash.	Wilkeson-Wingate, Wilkeson, Wash.	178	Joe Serack.

Government's Exhibit 13

AGREEMENT

This agreement between the Secretary of the Interior, acting as Coal Mines Administrator under the authority of Executive Order No. 9728 (dated May 21, 1946, 11 F. R. 5593), and the United Mine Workers of America, covers for the period of Government possession the terms and conditions of employment in respect to all mines in Government possession which were as of March 31, 1946, subject to the National Bituminous Coal Wage Agreement, dated April 11, 1945.

1. *Provisions of National Bituminous Coal Wage Agreement Preserved*

Except as amended and supplemented herein, this agreement carries forward and preserves the terms and conditions contained in all joint wage agreements effective April 1, 1941, through March 31, 1943, the supplemental agreement providing for the six (6) day workweek, and all the various district agreements executed between the United Mine Workers and the various Coal Associations and Coal Companies (based upon the aforesaid basic agreement) as they existed on March 31, 1943, and the National Bituminous Coal Wage Agreement, dated April 11, 1945.

2. *Mine Safety Program*

(a) *Federal Mine Safety Code.*

As soon as practicable, and not later than 30 days from the date of the making of the agreement, the Director of the Bureau of Mines, after consultation with representatives of the United Mine Workers and such other persons as he deems appropriate, will issue a reasonable code of standards and rules pertaining to safety conditions and practices in the mines. The Coal Mines Administrator will put this code into effect at the mines. Inspectors of the Federal Bureau of Mines shall make periodic investigations of the mines and report to the Coal Mines Administrator any violations of the Federal Safety Code. In cases of violation the Coal Mines Administrator will take appropriate action which may include disciplining or replacing the operating manager so that with all reasonable dispatch said violation will be corrected.

From time to time the Director of the Bureau of Mines may, upon request of the Coal Mines Administrator or the United Mine Workers, review and revise the Federal Mine Safety Code.

(b) *Mine Safety Committee:*

At each mine there shall be a Mine Safety Committee selected by the Local Union. The Mine Safety Committee may inspect any mine development or equipment used in producing coal for the purpose of ascertaining whether compliance with the Federal Safety Code exists. The Committee members while engaged in the performance of their duties shall be paid by the Union, but shall be deemed to be acting within the scope of their employment in the mine within the meaning of the Workmen's Compensation Law of the state where such duties are performed.

If the Committee believes conditions found endanger the life and bodies of the mine workers, it shall report its findings and recommendations to the management. In those special instances where the Committee believes an immediate danger exists and the Committee recommends that the management remove all mine workers from the unsafe area, the operating manager or his managerial subordinate is required to follow the recommendation of the Committee, unless and until the Coal Mines Administrator, taking into account the inherently hazardous character of coal mining, determines that the authority of the Safety Committee is being misused and he cancels or modifies that authority.

The Safety Committee and the operating manager shall maintain such records concerning inspections, findings, recommendations, and actions relating to this provision of the agreement as the Coal Mines Administrator may require and shall supply such reports as he may request.

3. *Workmen's Compensation and Occupational Disease*

The Coal Mines Administrator undertakes to direct each operating manager to provide its employees with the protection and coverage of the benefits under Workmen's Compensation and Occupational Disease Laws, whether compulsory or elective, existing in the states in which the respective employees are employed. Refusal of any operating manager to carry out this direction shall be deemed a violation of his duties as operating manager. In the event of such refusal the Coal Mines Administrator will take appropriate action which may include disciplining or replacing the operating manager or shutting down the mine.

4. *Health and Welfare Program*

There is hereby provided a health and welfare program in broad outline—and it is recognized that many important details remain to be filled in—such program to consist of three parts, as follows:

(a) *A Welfare and Retirement Fund.*

A welfare and retirement fund is hereby created and there shall be paid into said fund by the operating managers 5¢ per ton on each ton of coal produced for use or for sale. This fund shall be managed by three trustees, one appointed by the Coal Mines Administrator, one appointed by the President of the United Mine Workers, and the third chosen by the other two. The fund shall be used for making payments to miners, and their dependents and survivors, with respect to (i) wage loss not otherwise compensated at all or adequately under the provisions of Federal or State law and resulting from sickness (temporary disability), permanent disability, death, or retirement, and (ii) other related welfare purposes, as determined by the trustees. Subject to the stated purposes of the fund, the trustees shall have full authority with respect to questions of coverage and eligibility, priorities among classes of benefits, amounts of benefits, methods of providing or arranging for provision of benefits, and all related matters.

The Coal Mines Administrator will instruct the operating managers that the obligation to make payments to the welfare and retirement fund becomes effective with reference to coal produced on and after

June 1, 1946; the first actual payment is to be made on August 15, 1946, covering the period from June 1 to July 15; the second payment to be made on September 15, covering the period from July 15 to August 31; and thereafter payments are to be made on the 15th day of each month covering the preceding month.

(b) *A Medical and Hospital Fund.*

There shall be created a medical and hospital fund, to be administered by trustees appointed by the President of the United Mine Workers. This fund shall be accumulated from the wage deductions presently being made and such as may hereafter be authorized by the Union and its members for medical, hospital, and related purposes. The trustees shall administer this fund to provide, or to arrange for the availability of, medical, hospital, and related services for the miners and their dependents. The money in this fund shall be used for the indicated purposes at the discretion of the trustees of the fund; and the trustees shall provide for such regional or local variations and adjustments in wage deductions, benefits, and other practices, and transfer of funds to local unions, as may be necessary and as are in accordance with agreements made within the framework of the Union's organization.

The Coal Mines Administrator agrees (after the trustees make arrangements satisfactory to the Coal Mines Administrator) to direct each operating manager to turn over to this fund, or to such local unions as the trustees of the fund may direct, all such wage deductions, beginning with a stated date to be agreed upon by the Administrator and the President of the United Mine Workers: Provided, however, that the United Mine Workers shall first obtain the consent of the affected employees to such turn-over. The Coal Mines Administrator will cooperate fully with the United Mine Workers to the end that there may be terminated as rapidly as may be practicable any existing agreements that earmark the expenditure of such wage deductions, except as the continuation of such agreements may be approved by the trustees of the fund.

Present practices with respect to wage deductions and their use for provision of medical, hospital, and related services shall continue until such date or dates as may be agreed upon by the Coal Mines Administrator and the President of the United Mine Workers.

(c) *Coordination of the Welfare and Retirement Fund and the Medical and Hospital Fund.*

The Coal Mines Administrator and the United Mine Workers agree to use their good offices to assure that trustees of the two funds described above will cooperate in and coordinate the development of policies and working agreements necessary for the effective operation of each fund toward achieving the result that each fund will, to the maximum degree practicable, operate to complement the other.

5. *Survey of Medical and Sanitary Facilities*

The Coal Mines Administrator undertakes to have made a comprehensive survey and study of the hospital and medical facilities, medical treatment, sanitary and housing conditions in the coal mining areas. The purpose of this survey will be to determine the character and scope of improvements which should be made to provide the mine

workers of the Nation with medical, housing, and sanitary facilities conforming to recognized American standards.

6. *Wages*

(a) All mine workers, whether employed by the day, tonnage, or footage rate, shall receive $1.85 per day in addition to that provided for in the contract which expired March 31, 1946.

(b) Work performed on the sixth consecutive day is optional, but when performed shall be paid for at time and one-half or rate and one-half.

(c) Holidays, when worked, shall be paid for at time and one-half or rate and one-half. Holidays shall be computed in arriving at the sixth and seventh day in the week.

7. *Vacation Payment*

An annual vacation period shall be the rule of the industry. From Saturday, June 29, 1946, to Monday, July 8, 1946, inclusive, shall be a vacation period during which coal production shall cease. Day men required to work during this period at coke plants and other necessarily continuous operations or on emergency or repair work shall have vacations of the same duration at other agreed periods.

All employees with a record of one year's standing (June 1, 1945, to May 31, 1946) shall receive as compensation for the above-mentioned vacation period the sum of One Hundred Dollars ($100), with the following exception: Employees who entered the armed services and those who returned from the armed services to their jobs during the qualifying period shall receive the $100 vacation payment.

All the terms and provisions of district agreements relating to vacation pay for sick and injured employees are carried forward to this agreement and payments are to be made in the sum as provided herein.

Pro rata payments for the months they are on the pay roll shall be provided for those mine workers who are given employment during the qualifying period and those who leave their employment.

The vacation payment of the 1946 period shall be made on the last pay day occurring in the month of June of that year.

8. *Settlement of Disputes*

Upon petition filed by the United Mine Workers with the Coal Mines Administrator showing that the procedure for the adjustment of grievances in any coal-producing district is inequitable in relation to the generally prevailing standard of such procedures in the industry, the Coal Mines Administrator will direct the operating managers at mines in the district shown to have an inequitable grievance procedure to put into effect within a reasonable period of time the generally-prevailing grievance procedure in the industry.

9. *Discharge Cases*

The Coal Mines Administrator will carry out the provision in agreements which were in effect on March 31, 1946, between coal mine operators and the United Mine Workers that cases involving the discharge of employees for cause shall be disposed of within 5 days.

10. *Fines and Penalties*

No fines or penalties shall be imposed unless authorized by the Coal Mines Administrator. In the event that such fines or penalties are imposed by the Coal Mines Administrator, the funds withheld for that reason shall be turned over to the trustees of the fund provided for in Section 4 (b) hereof, to be used for the purpose stated therein.

11. *Supervisors*

With respect to questions affecting the employment and bargaining status of foremen, supervisors, technical and clerical workers employed in the bituminous mining industry, the Coal Mines Administrator will be guided by the decisions and procedure laid down by the National Labor Relations Board.

12. *Safety*

Nothing herein shall operate to nullify existing state statutes, but this agreement is intended to supplement the aforesaid statutes in the interest of increased mine safety.

13. *Retroactive Wage Provisions*

The wage provisions of this agreement shall be retroactive to May 22, 1946.

14. *Effective Date*

This agreement is effective as of May 29, 1946, subject to approval of appropriate Government agencies.

Signed at Washington, D. C., on this 29th day of May 1946.

J. L. KRUG,
Coal Mines Administrator.

JOHN L. LEWIS,
President, United Mine Workers of America.

Government's Exhibit 14

APPLICATION TO WAGE STABILIZATION BOARD AND BOARD'S ORDER OF MAY 31, 1946

UNITED STATES DEPARTMENT OF THE INTERIOR,
COAL MINES ADMINISTRATION,
Washington 25, D. C., May 29, 1946.

MY DEAR MR. WIRTZ: I transmit herewith six copies of a proposed Agreement with the United Mine Workers of America.

Application is made for approval of those provisions of the Agreement which involve changes in terms and conditions of employment. Such provisions appear to include: Section 2, Mine Safety Program; Section 3, Workmen's Compensation and Occupational Disease; Section 4 (a), A Welfare and Retirement Fund; Section 6, Wages; Section 7, Vacation Payment; Section 8, Settlement of Disputes; Section 10, Fines and Penalties; and Section 13, Retroactive Wage Provisions.

Sincerely yours,

/S/ B. MORRELL,
Deputy Coal Mines Administrator.

MR. W. WILLARD WIRTZ,
Chairman, National Wage Stabilization Board.

Enclosure 606.

UNITED STATES OF AMERICA

NATIONAL WAGE STABILIZATION BOARD

An Application filed by the Secretary of the Interior, Acting under authority of Executive Order #9728, 11 F. R. 5593, and Section 5 of the War Labor Disputes Act

In the Matter of Mines Producing Bituminous Coal, which were, as of March 31, 1946, subject to the National Bituminous Coal Wage Agreement, dated April 11, 1945

ORDER

On May 29, 1946, the Secretary of the Interior, acting pursuant to the authority of Executive Order #9728, May 21, 1946, and Section 5 of the War Labor Disputes Act, filed an application for a change in wages and other terms and conditions of employment in mines producing bituminous coal which were, as of March 31, 1946, subject to the National Bituminous Coal Wage Agreement, dated April 11, 1945, and which were then in the possession of the Secretary of the Interior.

Pursuant to the Stabilization Act of 1942, as amended, Executive Order #9250, of October 3, 1942; Executive Order #9672, of December 31, 1945; and Executive Order #9697, of February 14, 1946, and Section 5 of the War Labor Disputes Act, the National Wage Stabilization Board, having made such investigations as it deemed necessary and desirable in the premises, hereby orders the following changes in wages and other terms and conditions, which it deems to be fair and reasonable and not in conflict with any Act of Congress or Executive Order issued thereunder:

1. That a Mine Safety Program be established in accordance with the provisions of Section 2 of the Agreement entered into on May 29, 1946, between the Secretary of the Interior, acting as Coal Administrator under the authority of Executive Order #9728 (dated May 21, 1946, 11 F. R. 5593), and the United Mine Workers of America (herein called "the Agreement"), and which is attached and made a part hereof;

2. That the employees be provided with the protection and coverage of the benefits under Workmen's Compensation and Occupational Disease Laws in accordance with the provisions of Section 3 of the Agreement;

3. That a Health and Welfare Program be established in accordance with the provisions of Section 4 (a) of the Agreement;

4. That the wages of all mine workers be increased in accordance with the provisions of Section 6 (a) of the Agreement. It is the understanding of the Board, and such understanding is a condition of this Order, that said Section 6 (a) of that Agreement contemplates and will be administered to provide, where less than a full day is worked, for payment for the hours worked at the applicable rate for those hours, it being further understood that, except as inconsistent with the Agreement, existing wage practices will remain in effect.

5. That there shall be put into effect the provisions of Section 6 (b) of the Agreement covering payment for work performed on the sixth consecutive day;

6. That there shall be put into effect the provisions covering recognition of holidays as set out in Section 6 (c) of the Agreement. It is the understanding of the Board, and such understanding is a condition of this Order, that "holidays" as used in said Section 6 (c) refers to those holidays heretofore recognized in various District Agreements executed between the United Mine Workers of America and the various coal associations and coal companies, and that this section will be applied, with respect to the employees of the various coal mines, depending upon which holidays were recognized in the applicable District Agreement;

7. That vacation payments be made to all employees in accordance with the provisions of Section 7 of the Agreement. It is the understanding of the Board, and such understanding is a condition of this Order;

(a) That the provision in the second sentence of said Section 7 is in recognition of the previous contract practice in this industry and leaves it optional with the parties whether the mines are to operate during the vacation period;

(b) That the provision in the fifth paragraph of Section 7 of said Agreement will be the basis for interpretive rules governing the making of pro rata vacation payments in specific situations, and that these rules will be submitted to the National Wage Stabilization Board for such further consideration and action as may be appropriate under Section 5 of the War Labor Disputes Act.

8. That the Secretary of the Interior, acting as the Coal Mines Administrator, shall have the authority provided for by Section 8 of the Agreement to put into effect generally prevailing grievance procedure where such procedure has not theretofore been in effect;

9. That fines and penalties shall be imposed in a manner provided for by Section 10 of the Agreement and the funds shall be dealt with as provided for by that Section;

10. That this Order shall, upon approval of the President, be made effective as of May 29, 1946, provided that the changes in wages provided for in paragraphs 4, 5, and 6 of this Order shall be retroactive to May 22, 1946.

Dated: Washington, D. C., May 31, 1946.

NATIONAL WAGE STABILIZATION BOARD,
[S] W. Willard Wirtz,
W. WILLARD WIRTZ, *Chairman.*

[S] HARRY TRUMAN.
Approved May 31, 1946.

The Industry Members record their dissent as to paragraphs 1, 2, 3, 5, 6, 7, 8, 9, and 10.

Government's Exhibit 15

UNITED STATES
DEPARTMENT OF THE INTERIOR
COAL MINES ADMINISTRATION
Washington 25, D. C.

ORDER No. CMAN–1

By agreement dated 29 May 1946 between the Secretary of the Interior, acting as Coal Mines Administrator, and the United Mine Workers of America, certain changes in terms and conditions of employment, among other things, were agreed upon; the wage changes to be retroactive to May 22, 1946. Such changes in terms and conditions of employment were ordered by the National Wage Stabilization Board pursuant to Section 5 of the War Labor Disputes Act, which order was approved by the President 31 May 1946.

Now, therefore, pursuant to said Section 5 of the War Labor Disputes Act it is hereby ordered and directed that terms and conditions of employment in all mines in government possession under Executive Order 9728, which were, as of 31 March 1946, subject to the National Bituminous Coal Wage Agreement dated April 11, 1945, shall be the terms and conditions of employment which were in effect at the time possession of such mine was taken pursuant to said Executive Order 9728 as changed, amended, and supplemented by said agreement dated May 29, 1946, between the Coal Mines Administrator and the United Mine Workers. Terms and conditions of employment existing at the time possession of said mines was taken (May 22, 1946) are hereby construed to mean the terms and conditions existing on March 31, 1946, or the last day when said mines were operated under agreement with the United Mine Workers of America.

A copy of said agreement dated May 29, 1946, is attached hereto and made a part hereof.

This order shall be deemed to be a specific direction or order within the meaning of the terms and provisions of Regulations issued by the Secretary of the Interior and which Regulations were made applicable to all mines seized under Executive Order 9728 by order of the Secretary of the Interior dated May 21, 1946.

B. MOREELL,
Deputy Coal Mines Administrator.

JUNE 1, 1946.

Government's Exhibit 16

WASHINGTON, D. C., *June 12, 1946.*

MEMORANDUM OF AGREEMENT BY AND BETWEEN FEDERAL COAL MINES ADMINISTRATION AND UNITED MINE WORKERS OF AMERICA AFFECTING MODIFICATION OF CLAUSE 7 OF THE NATIONAL BITUMINOUS WAGE AGREEMENT EXECUTED AT THE WHITE HOUSE, WASHINGTON, D. C., MAY 29, 1946

To assure greater production of coal for essential needs, and in the public interest, it is agreed that Clause 7 of the aforesaid agreement is modified in the following respects:

That the vacation period for the year 1946 shall be limited to 4 days, to wit: Thursday, July 4, to Sunday, the 7th, inclusive, without prejudice or modification of the existing vacation clause of the agreement as affecting future conditions.

This modified agreement shall in no wise affect the payment of one hundred dollars ($100.00), or the proper proportion thereof, to be paid by all operators to each individual, in conformity with the terms of the National Bituminous Wage Agreement, executed as aforesaid, May 29, 1946.

FEDERAL COAL MINES ADMINISTRATION,
By BEN MOREELL,
Federal Coal Mines Administrator.

UNITED MINE WORKERS OF AMERICA,
By JOHN L. LEWIS, *President.*

Government's Exhibit 17

UNITED STATES
DEPARTMENT OF THE INTERIOR
COAL MINES ADMINISTRATION
Washington 25, D. C.

In reply please refer to
27 JUNE 1946

MEMORANDUM OF AGREEMENT

The undersigned hereby agree as follows:

1. Pending the appointment of trustees as provided in section 4 (a) ("A Welfare and Retirement Fund") of the Krug-Lewis Agreement of May 29, 1946, The Paymaster General, United States Navy, is hereby designated to act as custodian of the monies to be paid in accordance with the provisions of that section.

2. The function of the custodian shall be limited to the receipt and safekeeping of said monies and to account therefor to the trustees as soon as practicable and in accordance with instructions of the parties hereto.

3. From time to time the parties hereto may jointly issue instructions to the custodian and the custodian shall act in accordance therewith.

4. This agreement prescribes an operating program in accordance with the basic provisions of section 4 (a) of the Agreement of May 29 and is not a modification of the terms and conditions set forth in that Agreement.

BEN MOREELL,
Coal Mines Administrator.

JOHN L. LEWIS,
President, United Mine Workers of America.

Government's Exhibit 18

AUGUST 28, 1946.

MEMORANDUM OF AGREEMENT

The undersigned hereby agree as follows:

1. Pending the making of proper arrangements for trustee operation of the Medical and Hospital Fund provided for in Section 4 (b) of the Krug-Lewis Agreement of May 29, 1946, the International Secretary-Treasurer of the United Mine Workers of America is hereby designated to act as custodian of the money accruing to such fund by virtue of the provisions of Section 10 of said Krug-Lewis Agreement.

2. If any fines or penalties under said Section 10 of said Agreement are authorized by the Coal Mines Administrator the funds withheld for that reason shall be turned over to the said International Secretary-Treasurer of the United Mine Workers of America as said custodian in trust for the benefit of said Medical and Hospital Fund when put into operation.

3. The function of said custodian shall be limited to the receipt and safe keeping of said money derived from the terms of said Section 10 of the Krug-Lewis Agreement and to account therefor to the Trustees of said Medical and Hospital Fund as provided in Section 4 (b) of said Agreement.

4. This Agreement prescribed an operating program in accordance with the basic provisions of Section 4 (b) and Section 10 of said Agreement of May 29, 1946, and is not a modification of the terms and conditions set forth in that Agreement.

BEN MOREELL,
Coal Mines Administrator.

JOHN O'LEARY,
Acting President, United Mine Workers of America.

Government's Exhibit 19

UNITED MINE WORKERS OF AMERICA

John L. Lewis, president — Telephone: Metropolitan 0530

UNITED MINE WORKERS' BUILDING,
Washington 5, D. C., October 21, 1946.

Honorable J. A. KRUG,
Secretary of the Interior,
Washington, D. C.

DEAR MR. SECRETARY: On Saturday, October 19, 1946, you in conference with me again refused to correct the unilateral misinterpretations you have heretofore issued of the Krug-Lewis Agreement of May 29, 1946. Your interpretive Bulletin No. 5 of June 25, 1946, concerning pro rata vacation payments and your CMAN-8 setting up

railroad weights rather than tipple weights upon which to compute the payments due the Welfare and Retirement Fund remain outstanding and uncorrected. They and other similar unilateral misinterpretations constitute a breach of the said Krug-Lewis Agreement. That agreement is an integrated instrument and its respective provisions are interdependent. A breach of any of its provisions breaches the whole.

For ninety days our representatives have protested these breaches of contract which have led to the loss of millions of dollars due to the Mine Workers. Your adamant refusal to correct these errors continues unabated.

The question of pro rata vacation payments has upon the request of the Illinois Coal Operators Association been referred to arbitration and an award was made therein on August 6, 1946. We have called upon you for its enforcement. You have refused. In addition to these breaches of the contract, significant changes in the Government wage policy have occurred.

Under the contract reopening provisions of the National Bituminous Coal Wage Agreement dated April 11, 1945 (being Section 15 thereof), specifically carried forward into the Krug-Lewis Agreement, either party may give ten days' notice in writing of a date for a negotiating conference upon the matters outlined in said notice. The other party agrees to attend said conference. At the end of fifteen days after the beginning of such negotiating conference, either party may give to the other a notice in writing of the termination of the agreement, to be effective five days after the receipt of such notice.

The Krug-Lewis Agreement, having thus been breached by you and significant changes in Government wage policy having occurred, you are accordingly hereby officially notified that the United Mine Workers of America requests a joint conference of the accredited representatives of the joint contracting parties to the Krug-Lewis Agreement of May 29, 1946, for the purpose of negotiating new arrangements affecting wages, hours, rules, practices, differentials, inequalities and all other pertinent matters affecting or appertaining to the national bituminous coal industry. It is suggested that a convening of the conference at ten o'clock A. M., Friday, November 1, 1946, in Washington, D. C., would be appropriate.

Your prompt acknowledgment of the receipt of this notice and your acquiescence to such conference is respectfully requested.

Yours truly,

JOHN L. LEWIS,
President, United Mine Workers of America.

Government's Exhibit 20

[Copy]

UNITED STATES
DEPARTMENT OF THE INTERIOR
COAL MINES ADMINISTRATION

WASHINGTON 25, D. C., *October 22, 1946.*

MR. JOHN L. LEWIS,
President, United Mine Workers of America,
United Mine Workers Building, Washington 5, D. C.

DEAR MR. LEWIS: The Secretary of the Interior has requested me to reply to your letter of October 21 addressed to him.

I desire to reaffirm the position taken in my letter of yesterday prepared prior to the receipt by me of your letter to the Secretary, to the effect that the Coal Mines Administration has not taken any action which would constitute a breach of the Krug-Lewis Agreement.

Those provisions of the District Agreements, carried forward by the Krug-Lewis Agreement, adequately provide for the settlement of disputes concerning the proper interpretation of the contract by the ultimate submission of these disputes to arbitration. The position of the Coal Mines Administration has always been that the grievance procedure, culminating in arbitration, is the proper medium for the settlement of disputes concerning the meaning of the contract.

That your organization understood this position is evidenced by the fact that it initiated the proceedings resulting in the arbitrator's decision in Illinois concerning pro rata vacation payments to which you refer in your letter. At no time has this Administration refused the enforcement of arbitrators' decisions. Any delay with respect to the over-all effects of the arbitrator's decision in Illinois was caused largely by your illness. Moreover, we wish to correct your statement that this decision was rendered on August 6, 1946. It was actually rendered on August 31, 1946, and this office advised thereof by you by letter dated September 9, 1946.

With respect to your statement that significant changes in Government wage policy have occurred, such changes, if any, provide no contractual basis requiring negotiations for a revision of the Krug-Lewis Agreement.

Your reference to Section 15 of the National Bituminous Coal Wage Agreement of April 11, 1945, as a basis for requiring contract negotiations looking toward a revision of the existing agreement is clearly unwarranted, for a number of reasons. No attempt is made to detail all these reasons but, among them, is the obvious fact that the Krug-Lewis Agreement itself superseded Section 15 of the National Bituminous Coal Wage Agreement. The Krug-Lewis Agreement states that it "*covers for the period of Government possession the terms and conditions of employment in respect to all mines in Government possession.*" This statement of the Agreement's life is unqualified. The Krug-Lewis Agreement carries forward only those terms and provisions of past contracts which were not amended or supplemented by

the Krug-Lewis Agreement. To now contend that the life of the Krug-Lewis Agreement was subject to the provisions of Section 15 of the 1945 Agreement is tantamount to contending that the Krug-Lewis Agreement could have been reopened the day after it was signed. Obviously, the unqualified statement of the May 29, 1946, document amends and eliminates the 1945 provisions which you cite.

I am, therefore, unable to treat your letter of October 21, 1946, as a notice given pursuant to any existing contract provisions requiring a joint conference for the purpose of negotiating new arrangements affecting wages and other matters.

This Administration considers that the Krug-Lewis Agreement is in full force and effect and calls upon the United Mine Workers of America, who have always prided themselves on fulfilling their contract obligations, to abide by the terms of that agreement.

This Administration is ready, as it has been in the past, to meet with you to discuss matters affecting the operation of the bituminous coal mines under the Krug-Lewis Agreement, and for that purpose, with the above reservation, any date for such discussions is agreeable to this administration.

It is suggested that any negotiating conferences looking toward a new agreement for the operation of the bituminous coal mines be held with the representatives of the owners of such mines. The Coal Mines Administration continues ready to lend its good offices to promoting such negotiating conferences, thereby continuing the negotiations which were temporarily recessed pending the Mine Workers Convention early this month. Such an agreement would accomplish the result which has been publicly expressed as the desire of the Coal Mines Administration, the United Mine Workers, and the operators, namely, the return of the mines to private operation.

Very truly yours,

/S/ N. H. Collisson,
Captain, USNR,
Coal Mines Administrator.

Enclosure 5.

Government's Exhibit No. 21

[Copy]

Of Reclamation, Amarillo, Texas

Straight wire

October 22, 1946, Amarillo, Texas.

John L. Lewis,
President, United Mine Workers of America,
United Mine Workers Building, 15th and I Streets NW,
Washington, D. C.

Today Captain Harvey Collisson, Coal Mines Administrator, wrote you giving our views on the Krug-Lewis agreement and said that we would be agreeable to meet with you at any time if you desire to discuss provisions of the existing contract between the United Mine Workers and the United States Government. I understand that your pref-

erence is to meet about November 1, and I want to meet your wishes. On that date I will be at Tule Lake, California, discussing our program for veterans' settlement, but would find a way of arranging time for our meeting if you want to meet there. However, if it should better meet your convenience, I will see you in Washington directly after my last publicly announced address on November 6 to the Town Hall in Los Angeles which ends my committed western inspection trip. Will you please let my office know what arrangement will suit you best?

J. A. KRUG,
Secretary of the Interior.

Government's Exhibit 22

UNITED MINE WORKERS OF AMERICA
John L. Lewis, president Telephone Metropolitan 0530

UNITED MINE WORKERS' BUILDING,
Washington 5, D. C., October 22, 1946.

Honorable J. A. KRUG,
Secretary of the Interior,
Department of the Interior,
Washington, D. C.

DEAR MR. SECRETARY: This will reply to your telegram from Amarillo and Collisson's letter from Washington of October 22.

The existing Krug-Lewis Agreement expressly provides that both parties to the agreement are bound to meet within a ten-day period upon formal request of either party. Such formal request was filed yesterday by the United Mine Workers of America.

Failure on your part to honor this meeting will constitute another breach of the contract and will void the Krug-Lewis Agreement.

Yours truly,

JOHN L. LEWIS, *President.*

L:h.

Government's Exhibit 23

Copy of telegram from Secretary Krug to Mr. John L. Lewis dated 27 October 1946:

Replying to your letter of 21 October I am requesting that you and/or your representatives meet with Coal Mines Administrator Collisson and his associates on 1 November or any other date agreeable to you.

Government's Exhibit 24

Copy of telegram from Mr. John L. Lewis to Secretary Krug dated 28 October 1946:

I esteem your telegram 27th, received by me today, as compliance with request for official conference contained my letter 21 October. I accordingly advise that representatives United Mine Workers will meet with Coal Mines Administrator Collisson and

his associates at 11 o'clock a. m. on Friday, 1 November. Under these conditions Krug-Lewis Agreement remains effective and unchanged during period of negotiations.

Enclosure 1.

Government's Exhibit 25

UNITED MINE WORKERS OF AMERICA

John L. Lewis, president — Telephone: Metropolitan 0530

UNITED MINE WORKERS' BUILDING,
Washington 5, D. C., November 15, 1946.

Honorable J. A. KRUG,
Secretary of the Interior,
Washington, D. C.

DEAR MR. SECRETARY: In accordance with the provisions of the Krug-Lewis Agreement dated May 29, 1946, the United Mine Workers of America on October 21, 1946, officially requested a joint conference of the accredited representatives of the joint contracting parties to said agreement. Such conference convened on November 1, 1946.

Fifteen days having now elapsed since the beginning of said conference, the United Mine Workers of America, exercising its option, hereby terminates said Krug-Lewis Agreement as of 12:00 o'clock P. M., midnight, Wednesday, November 20, 1946.

Yours truly,

UNITED MINE WORKERS OF AMERICA,
By JOHN L. LEWIS, *President.*

Government's Exhibit 26

UNITED STATES
DEPARTMENT OF THE INTERIOR
COAL MINES ADMINISTRATION
Washington

REVISED REGULATIONS FOR THE OPERATION OF COAL MINES UNDER GOVERNMENT CONTROL

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UNITED STATES

DEPARTMENT OF THE INTERIOR

COAL MINES ADMINISTRATION

, Washington

REVISED REGULATIONS FOR THE OPERATION OF COAL MINES UNDER GOVERNMENT CONTROL

"Regulations for the Operation of Coal Mines Under Government Control," issued by the Secretary of the Interior on May 19, 1943, as

amended July 29, August 13, and December 23, 1943 (8 F. R. 6655, 10712, 11344, 17339), with the exceptions specified in Section 50 hereof, are hereby amended and revised, as follows:

I. GENERAL

1. *Authority for Regulations*

These regulations are issued under the authority of Executive Order No. 9728, dated May 21, 1946, (11 F. R. 5593), authorizing and directing the Secretary of the Interior—

> to take possession of any and all such mines, and, to the extent that he may deem necessary, of any real or personal property, franchises, rights, facilities, funds, and other assets used in connection with the operation of such mines; to operate or to arrange for the operation of such mines in such manner as he may deem necessary in the interest of the war effort; and to do all things necessary for, or incidental to, the production, sale, and distribution of the coal produced, prepared, or handled by the said mines.

2. *Scope of Regulations*

These regulations shall govern the operation of all coal mines placed under Government possession and control pursuant to Executive Order No. 9728, including any and all real and personal property, franchises, rights, facilities, funds, and other assets used in connection with the operation of such mines and the distribution and sale of their products, for operation by the United States.

3. *Effect of Regulations*

These regulations shall supersede all prior orders or instructions governing the operation of such coal mines to the extent that such orders or instructions are inconsistent with these regulations. (See Section 50, infra, as to superseding regulations heretofore in effect.)

4. *Purpose of Operation*

The primary object of Government intervention in the operation of the said properties is the maintenance of full production in the interest of the war effort, the continued operation of the national economy during the transition from war to peace, and the preservation of the national economic structure in the present emergency. All duties and authorities set forth in these regulations are to be construed in the light of this purpose, and if any regulation interferes with the accomplishment of this purpose, prompt application must be made to the Coal Mines Administration to secure the waiver or modification of such regulation.

5. *Plan and Policy of Operation*

Control of the operations of the coal mines will be exercised by the Government to the extent necessary to maintain maximum production. Wherever the cooperation of the company and its personnel can be secured, the existing organization of the mining company will be utilized, and the company will continue operation in the regular course of business as a going enterprise, conforming with such directions as the Government may issue. Where the prompt and effective coopera-

tion of a company cannot be secured, appropriate action will be taken under Sections 30 and 31 of these regulations, or otherwise.

All properties in the possession of the Government shall be operated in a manner consistent with the fact that title to the properties remains in the owners thereof and that the Government, having temporarily taken possession or custody, will assert only such rights as are necessary to accomplish the national purpose of continued and maximum production.

6. *Definitions*

As used herein,

The term "coal mines" means the coal mines of which possession was taken by the orders of the Secretary of the Interior of May 21, 1946, and orders supplementary and amendatory thereto, and any and all real and personal property, franchises, rights, facilities, funds, and other assets used in connection with the operation of such mines and the distribution and sale of their products.

The term "company" or "mining company" means the corporation, partnership, association, or individual in possession and control of coal mines immediately prior to the taking of possession of such coal mines by the Secretary of the Interior.

II. ORGANIZATION FOR OPERATION

10. *Supervision and Direction*

The power, authority, and discretion of the Secretary of the Interior with respect to the operation of the coal mines may under the authority of Order No. 2199 of the Secretary of the Interior, dated May 21, 1946 (11 F. R. 5604), be exercised by the Coal Mines Administrator and by the Deputy Coal Mines Administrator (both hereinafter referred to as the Administrator), to the same extent and with the same effect as such power, authority, and discretion may be exercised by the Secretary of the Interior. The power, authority, and discretion of the Administrator may be exercised through such personnel of the Coal Mines Administration of the Department of the Interior and in such manner as the Administrator may determine.

11. *Designation of Area Officer-in-Charge*

Within each of the regions designated in Appendix A attached hereto, officers designated by the Deputy Administrator shall serve as Area Officers-in-Charge.

12. *Duties of Area Officer-in-Charge*

Each Area Officer-in-Charge is authorized, subject to the orders of the Administrator, to exercise full powers of supervision and direction over the operation of all coal mines in the possession of the Government within his territorial jurisdiction during the period of Government control of the said mines. He shall have authority to issue specific directions as to the production of coal by the mines subject to his supervision, and as to all operating and financial arrangements for such mines. He shall also have authority to advise, and to issue directions, with respect to the construction of applicable orders and regulations. All directions and orders shall be in writing and a copy shall forthwith be mailed to the Deputy Administrator.

13. *Designation of Advisory Councils*

The Chairman and the Labor Representative of each Bituminous Coal District Board in the territory covered by each of the several Area offices of the Coal Mines Administration shall constitute an Area Advisory Council. The members of the Area Advisory Councils shall serve without compensation and will be expected to be on duty in the offices of the Area Officer-in-Charge at such times and for such periods as may prove necessary. Where there are two or more chairmen of District Boards or two or more labor representatives on any Area Advisory Council either or both groups may designate one man to serve in the absence of the others of such group.

14. *Duties of Advisory Councils*

Each Area Advisory Council shall serve as advisor to the Area Officer-in-Charge within the area of its jurisdiction and to the Administrator, transmitting to the said Area Officer-in-Charge all complaints and suggestions with reference to the operation of mines under Government control within the area of its jurisdiction, together with its recommendations respecting such complaints and suggestions and the reports of any investigations conducted with regard to the same. The members of each Area Advisory Council shall be freely consulted by the Area Officers-in-Charge. Any member of the Area Advisory Council shall be free to make specific or general suggestion or complaint to the Administrator who will give it his prompt and careful consideration.

15. *Designation of Operating Managers*

The operation of the coal mines of a mining company will ordinarily be entrusted to an officer of the company formerly in charge of operations who is authorized to act for the said company and who will, under appointment by the Administrator, during the period of Government control, act as Operating Manager for the United States, while continuing to serve as an officer and employee of the mining company. At the request of the said company, such person may be removed from the position of Operating Manager for the United States, and an officer or employee of the company nominated by the company may be appointed by the Administrator.

Where the prompt and effective cooperation of the mining company in the operation of the coal mines under Government control cannot be secured, a person other than an officer or employee of the company may be designated as the Operating Manager for the United States by the Administrator.

Where a company is in receivership or trusteeship, the receiver or trustee will ordinarily be designated Operating Manager for the United States.

16. *Status of Operating Managers*

Any officer or employee of a mining company who, with the permission of, or without objection from the said company, accepts a designation as Operating Manager for the United States of the coal mines of said company shall, together with all other officers and employees, serve in full recognition of his responsibilities to the Government and subject to all orders and regulations of the Administrator,

but he and all other officers and employees shall serve as agents and employees of the company with respect to all actions which they would have been empowered to take on behalf of the company in the absence of Government control of its property.

The Operating Manager shall continue to be subject to all restrictions and limitations imposed by the company upon his exercise of his authority. In respect of any action to which or in which the company requires its special consent or concurrence, the Operating Manager shall obtain such consent or concurrence before he takes such action. If consent is denied, the Operating Manager shall so report to the Area Officer-in-Charge, stating the circumstances of the denial. The Area Officer-in-Charge shall transmit the report to the Administrator, and the Operating Manager may proceed to take the action in question only upon direction of the Administrator.

Designation of any person as Operating Manager for the United States shall not be deemed to constitute him as officer or employee of the United States within the meaning of Federal statutes governing personnel.

The appointment of any Operating Manager shall terminate at the discretion of the Administrator upon notice to the Operating Manager.

17. *Duties of Operating Managers*

Operating Managers shall perform for their companies ordinary duties of management in accordance with established policies and practices, so far as consistent with these regulations and the instructions and orders of the Administrator and Area Officer in Charge, and shall in addition perform all special duties placed on them as Operating Managers of the United States by these regulations, by their appointment instructions, so far as consistent with these regulations, and by such orders as the Administrator or the Area Officer in Charge may issue.

An Operating Manager is authorized to take all necessary action in the manner in which and through the officials by which it has been customarily accomplished and may, as should be necessary and convenient, take action either under his customary title and designation or as "Operating Manager for the United States (name of company)," as hereinabove and hereinafter specified. No Operating Manager for the United States of any mining company is authorized or shall be regarded as having authority, express or implied, to bind or impose any liability on the United States or any of its officials or agents in the absence of a specific direction or order by the Administrator to that effect. Nor shall any operations of any mine property in the possession and control of the Government, or the proceeds, earnings, or liabilities of such mine property in any event be, or be regarded as being, for the account or at the risk or expense of the Government except as a specific written direction or order to that effect shall have been given by the Administrator.

III. OPERATION OF MINES

20. *Statement of Property Taken.*

The Operating Manager of each mine shall promptly submit to the Area Officer in Charge of the Area in which the mine is located a statement specifically enumerating and defining the properties under his management, in accordance with a form to be furnished by the Administrator. Such statement shall be promptly submitted by the Area Officer in Charge to the Administrator with recommendations as to any corrections that may appear proper and shall be subject to such correction as the Administrator, or any other official specifically designated for the purpose by the Administrator, shall from time to time find to be necessary. A copy of such revised statement shall be returned to each Area Officer in Charge to serve as a guide to him and any successor Operating Manager in the performance of their functions.

21. *Accounts and Records*

The Operating Manager shall set up and keep the books and records of the company in a manner such that the period of Government operation will be separate, or may be readily separated, from the operation of the company previously operating the mines as a private enterprise. The same set of books may be used so long as items of payments, receipts, and all other transactions engaged in on and after May 22, 1946, may be easily separated from items concerning transactions engaged in before that date.

The Operating Manager shall render such accounting as the Administrator may from time to time prescribe.

22. *Financial and Commercial Transactions*

Ordinary financial and commercial transactions shall be carried on so far as possible in accordance with the customary procedures and policies of the mining company. The Operating Managers shall enter into such financial transactions, either by way of receipt or expenditure, as are necessary to continue the enterprise, utilizing any funds or properties due or belonging to the mining company, and shall draw upon the funds and accounts of the company, utilizing customary sources of credits or funds, and make all necessary disbursements.

The Operating Managers shall, if the need arises, inform all third persons with whom they enter into such transactions that such transactions are being carried on, under the authority of the Government and the company, in accordance with customary procedures and policies, that the company remains subject to the usual methods of enforcement of its obligations, and that the Government expects that the acts and agreements of the company will be accorded the same consideration and effect as in the absence of Government control.

23. *Employment*

(a) Working conditions: In accordance with Executive Order No. 9728 and Section 4 of the War Labor Disputes Act terms and conditions of employment which were in effect at the time possession of shall be maintained except as such terms and conditions of employ-

ment may be changed by order or direction of the Administrator, subject to the provisions of Section 5 of the War Labor Disputes Act, where appropriate.

(b) Collective bargaining: In accordance with the terms of Executive Order No. 9728, the customary machinery for the adjustment of workers' grievances shall be maintained in all mines and the right of the workers shall be recognized to continue their membership in any labor organization, to bargain collectively through representatives of their own choosing, and to engage in collective activities for the purpose of collective bargaining or other mutual aid or protection, provided that such concerted activities do not interfere with the operation of the mine.

(c) Employment benefits: All benefits enjoyed by employees of the mine under private control, including State and Federal social insurance payments and benefits, workmen's compensation coverage, and group insurance, and all arrangements governing the payment of wages, including war bond purchase plans and the check-off of union dues, shall be continued.

(d) Personnel: Operating Managers shall use the customary personnel so far as practicable and take all steps to encourage miners to work under present wages and working conditions with the understanding that any eventual wage adjustments will be made retroactive, but they shall in no event use force; if any actual need has developed for maintenance of order by use of the military forces, they shall communicate with the appropriate Area Officer-in-Charge for transmission of said request to the proper officials.

All personnel of the mines, both officers and employees, shall be considered as called upon by Executive Order No. 9728, to serve the Government of the United States, but nothing in these regulations shall be construed as recognizing such personnel as officers and employees of the Federal Government within the meaning of the statutes relating to Federal employment.

24. *Application of Federal and State Law*

The mining companies, their personnel, and their property are deemed to remain subject during the period of Government control to all Federal and State Laws and to actions, orders, and proceedings of all Federal and State courts and administrative agencies. The companies are expected to meet all Federal, State, and local taxes, contributions, and assessments in the customary manner.

The mining companies are deemed to remain subject to suit as heretofore. However, no Operating Manager or Area Officer-in-Charge is authorized to bring suit, accept service, or enter into any legal proceeding, on behalf of the United States without specific direction from the Administrator. Information as to the pendency, necessity, or probability of any legal proceeding which casts in question any right of the United States should be promptly transmitted by the Operating Manager to the Area Officer-in-Charge and by the latter officer to the Administrator, with appropriate recommendations concerning the assignment of legal counsel if such assignment is indicated.

The possessory interest of the United States in the properties of the companies is deemed to be protected by the criminal laws protecting United States property.

25. *Interim Procedure for Confirmation of Financial Responsibility by Mining Company*

(a) Execution and Delivery of Instrument of Agreement and Certification

Any mining company, by a duly authorized officer or agent, may execute and deliver to the Administrator an Instrument of Agreement and Certification (in the form to be prescribed by the Administrator) confirming (as hereinafter provided) the sole financial responsibility of the mining company for its operations. Such mining company may, however, as hereinafter set forth, reserve to itself the right to assert claims for liability against the Government with respect to damage allegedly resulting from any specific direction or order of the Administrator. The Operating Manager for the coal mines of any mining company for which such Instrument of Agreement and Certification is in effect shall not be subject to the requirements as to financial transactions and current accountings set forth in Section 26. The Instrument of Agreement and Certification may be terminated by the mining company at any time upon ten days' written notice, as hereinafter provided.

By said Instrument of Agreement and Certification (subject to reservation of rights to assert claims for damage allegedly resulting from any specific directions or orders as provided in paragraph (c) of this section) the mining company shall

i. agree and confirm as its understanding that the operations of the coal mines of the mining company, and all acts and omissions of the Operating Manager, from the date of the beginning of Government possession and control to the effective date of termination of the Instrument, have been and will continue to be for the financial account of the mining company and not for the account of the United States; and

ii. adopt and ratify all acts and omissions of the Operating Manager in the operation of the coal mines of the mining company during such period, and agree that the Government and its officials shall not be subject to any claims by the mining company or others by reason of the possession and control of the coal mines of the mining company during such period; and

iii. certify that during such period the mining company will not make any disposition of its funds or incur any indebtedness which will impair the working capital of the community so as thereby to jeopardize maintenance of the maximum possible production of coal at its coal mines.

(b) Effect of Such Instrument

Subject to the reservation of rights as provided in paragraph (c) of this section, the execution and delivery of such an Instrument of Agreement and Certification to the Administrator shall be deemed to

constitute a waiver by the Government of all rights which it may have to an accounting with respect to all operations from the beginning of the period of Government possession and control to the effective date of termination of such Instrument, and a discharge of the Operating Manager from any liability to the Government with respect to all actions taken by him as such during that period.

(c) Reservation of Right to Assert Against the Government Claims for Damage Alleged to Result from Specific Directions or Orders

A mining company which has executed and delivered such an Instrument of Agreement and Certification may, nevertheless, reserve to itself the right to assert a claim for damage alleged to have been suffered, or threatened to be suffered, by it as the direct result of a specific direction or order of the Administrator, as hereinafter provided:

(1) As to any specific direction or order which has been issued prior to the date of the execution of its Instrument of Agreement and Certification, such reservation of right may be made by the mining company's transmitting to the Administrator, together with its executed Instrument of Agreement and Certification, a writing, signed by a duly authorized officer or agent, which shall:

i. Specify the particular direction or order of the Administrator which the mining company asserts directly resulted in damage to the mining company.

ii. Specify the particular action taken pursuant to such direction or order, which action would not have been taken except for such direction or order and which action, it is claimed, resulted in damage to the mining company, and

iii. Specify the nature of the damage asserted to have been so caused and the amount thereof.

Upon such transmission to the Administrator of such written specifications, the mining company shall be deemed to have reserved all rights to assert a claim for damage alleged to have been suffered or threatened during the period of Government possession and control as the direct result of compliance with the specified direction or order, and the Government shall be deemed to have reserved all rights to assert by way of offset against any such claim of liability the benefits resulting to the mining company from Government possession and control, and to assert any other defense against such claim.

Failure by the mining company to transmit to the Administrator such a writing, together with its executed Instrument of Agreement and Certification (unless upon request the Administrator shall extend the time for the transmission of the writing for good cause shown) shall be deemed to constitute acquiescence by the mining company that the consequences of all specific directions and orders issued by the Administrator prior to the date of the execution of its Instrument of Agreement and Certification shall be covered by clauses i and ii of the Instrument of Agreement and Certification.

(2) As to any specific direction or order which may be issued subsequent to the date of the execution of its Instrument of Agreement and Certification, such reservation of right may be made by the mining company's filing a timely protest with the Administrator, as follows:

If, upon the issuance by the Administrator of a specific direction or order to an Operating Manager for the coal mines of a mining company, the mining company desires to reserve the right to assert a claim for damage alleged to be threatened or to be suffered by it as the direct result of compliance with such specific direction or order, then the mining company shall protest such direction or order to the Administrator (as hereinafter provided), and in such written protest shall

i. Specify the particular direction or order of the Administrator which the mining company asserts will directly result in damage to the mining company if complied with,

ii. Specify the action which, it is asserted, is required by such direction or order to be taken, which action would not be taken except for such direction or order, and which action, it is claimed, will result in damage to the mining company,

iii. Specify the nature of the damage which the mining company asserts will be suffered by it as the result of compliance with such direction or order, and an estimate of the amount of such asserted threatened damage, and

iv. Protest the specified direction or order. Such protest shall be dispatched as aforesaid to the Administrator, Department of the Interior, Washington, D. C., by registered mail or telegram within five days of the receipt by the Operating Manager of the direction or order protested.

Upon the dispatch of such a protest as above provided, the effectiveness of the direction or order, as it applies to the Operating Manager for the coal mines of the protesting mining company, shall be suspended pending further directions of the Administrator. If thereafter the Administrator, in writing, confirms the effectiveness of the protested direction or order as it applies to such Operating Manager, such Operating Manager shall forthwith carry into effect the protested direction or order, with any modifications made by the Administrator in his confirmation thereof.

Thereupon the mining company shall be deemed to have reserved all rights to assert a claim for damage alleged to have been suffered by it during the remainder of the period of Government possession and control as the direct result of compliance with such protested direction or order, and the Government shall be deemed to have reserved all rights to assert by way of offset against any such claim of liability the benefits resulting to the mining company from Government possession and control, and to assert any other defense against such claim.

In all other respects the provisions of the Instrument of Agreement and Certification shall continue in full force and effect and the Operating Manager for the coal mines of the

protesting mining company shall continue not to be subject to the requirements as to financial transactions and current accountings set forth in Section 26. The Operating Manager, however, shall furnish to the Administrator, on his request, such pertinent information and data relating to the effect of compliance with the protested specific direction or order as the Administrator may request.

Failure by the mining company to file such a protest within the five days mentioned (unless upon request the Administrator shall extend the time for the filing of the protest for good cause shown) shall be deemed to constitute acquiescence by the mining company that the consequences of the said specific direction or order shall be covered by clauses i. and ii. of the Instrument of Agreement and Certification.

In the event that the Administrator shall expressly require that a specific direction or order issued by him shall be complied with prior to the lapse of the five-day interval for transmitting a protest as above provided, then the Operating Manager shall comply forthwith with said specific direction or order and the mining company may effect a reservation of right by transmitting, within ten days following the issuance of such express requirement, a writing in accordance with the specifications contained in subparagraph (1) above.

(d) Termination of Effectiveness of Instrument of Agreement and Certification

Any mining company having executed an Instrument of Agreement and Certification, as above provided, may terminate the effectiveness thereof as to all future acts performed by, or omissions of, the Operating Manager in the operation of the properties of the mining company, by transmitting written notice of such termination, by telegram or registered mail, to the Administrator, Department of the Interior, Washington, D. C., such termination to become effective ten days after the receipt of such notice by the Administrator.

In the event of such termination, the Administrator may assume that the mining company claims or reserves the right to claim that all operations from that date forward during the remainder of the period of Government possession and control of the mining property are for the account of the Government and accordingly that the Operating Manager for the United States and the mining company are accountable to the Government for their custodianship and disposition of proceeds from operations accrued during the balance of such period of Government possession and control

Upon and after the effective date of termination of the Instrument of Agreement and Certification, as herein provided, the Operating Manager for the coal mines of the mining company terminating such Instrument shall be subject to the requirements as to financial transactions and current accountings set forth in Section 26.

(e) Nonacquiescence in Claim of Liability, and Nonwaiver of Right to Claim Liability Except as Specifically Waived

None of the provisions of this section or of Section 26, and no action that shall be taken pursuant to any of them, shall be deemed to constitute acquiescence by the Administrator in any claim that operations during the period of Government possession and control are for the financial account of the Government, or acquiescences in any other claim that the Government or any of its officials are subject to any liability to the mining company or any other person or persons with respect to any such action, or otherwise. None of the provisions of this section or of Section 26, nor any action taken pursuant to any of them, shall be deemed to constitute a waiver by the mining company of any right which it may have to assert a claim against the United States except as specifically waived by the execution and delivery of an Instrument of Agreement and Certification (subject to reservation of right to assert claims for damage alleged to result from specific directions or orders, as hereinabove provided).

(f) Inapplicability of Certain Provisions of Section 40 to Mining Companies Executing an Instrument of Agreement and Certification Remaining Effective at Termination of Government Possession and Control

Where an Instrument of Agreement and Certification has been executed and delivered by a mining company and remains in effect on the date Government possession and control of its properties is terminated by the Administrator pursuant to Section 40 of these regulations, the company will be deemed to have satisfactorily complied with the requirements of that section for the execution and delivery of Instrument No. 1 or Instrument No. 2 therein described, as the case may be, and, unless otherwise directed by the Administrator, the appointment of the Operating Manager for the mines of the company will be deemed to be terminated without further action by the Administrator.

(g) Furnishing of Information and Compliance

Nothing in this section or in Section 26 shall be deemed or construed to impair in any way the right of the Administrator from time to time to direct and require the furnishing of information pertinent to the operations of any mining company during the period of Government possession and control, having regard to the purposes of such possession and control as set forth in Section 4 of these regulations, or the right of the Administrator to enforce compliance with orders or directions issued by him. Nor is anything in this section or in Section 26 to be deemed to limit in any way the right of the Administrator at any time to exercise his lawful authority to any degree or to any extent as circumstances arise which, in his opinion, necessitate the exercise of such authority in order to effectuate the purposes of Government possession and control as set forth in Section 4 of these regulations.

26. *Requirements as to Financial Transactions and Current Accountings*

The Operating Manager for the coal mines of any mining company for which an Instrument of Agreement and Certification as provided in Section 25 is not in effect shall not make major disbursements of an extraordinary nature of dividend payments and shall not incur indebtedness other than in the course of normal business unless:

(1) at least ten days prior to the making of such disbursement or payment or the incurring of such indebtedness, the Operating Manager shall have filed with the Administrator a notice of intention to make such disbursement or payment or to incur such indebtedness, specifying in detail the amount and nature of and the necessity for the proposed disbursement, payment, or indebtedness, and the effect thereof upon the preservation by the mining company of a working capital sufficient to enable it to maintain maximum possible production; and

(2) the Administrator shall have advised the Operating Manager that he has no objection thereto.

The Administrator may at any time request or direct such Operating Manager to take whatever steps may be appropriate with respect to: full and periodic accountings of the operation of the coal mines; inventories of all real and personal property, franchises, rights, facilities, funds, and other assets used in connection with the operation of the coal mines of the mining company and the distribution and sale of its products; the withdrawal of private management from further participation in the operation of the coal mines; and other pertinent matters. Upon the Administrator's request or direction, such Operating Manager shall furnish to him such data and information as he may request or direct pertaining to the period of operation under Government possession and control and a fair evaluation of the results thereof; the data requested may include such information for current periods as is specified in Section 40 for the entire period of Government possession and control. The Administrator may require that financial statements be certified by an independent Certified Public Accountant. Accountants and other agents of the Government shall be given reasonable access to all books, papers, and inventories of the mining company.

IV. ENFORCEMENT OF REGULATIONS AND ORDERS

30. *Enforcement Powers of Area Officers in Charge*

In any case where the prompt and effective cooperation of a mining company cannot be secured, the Area Officer in Charge may issue appropriate instructions for the operation of the coal mines of such company and shall immediately report the circumstances and his instructions to the Administrator. Pending receipt of directions from the Administrator, it shall be the duty of the Area Officer in Charge to deny access to the premises to persons not contributing to the operation of the enterprise, to prevent any interference with the coal mines or the operations under Government control, and to see that the production of coal is continued.

31. *Removal of Operating Managers*

Upon failure of an Operating Manager to comply with these regulations or the orders of the Administrator or the Area Officer-in-Charge or upon failure of a mining company to respect the action taken by its Operating Manager who is an official of the company, the Area Officer-in-Charge shall report to the Administrator the desirability of the removal of the Operating Manager, with such recommendations for a substitute as he may wish to make.

32. *Use of Military Force*

Any request for the use of the armed forces of the United States to protect life or property in connection with the operation of any mine under the control of the United States shall be submitted by the Operating Manager in charge of the mine, or his representative, to the Area Officer-in-Charge, who shall promptly transmit it with his recommendation to the liaison officer designated by the Secretary of War for the district in question and, in those cases where it is the first time such request has been made in the area, to the Administrator, for decision as to whether a request for such protection shall be submitted to the Secretary of War pursuant to the provisions of Executive Order No. 9728. Area Officers-in-Charge are authorized, except in those cases where it is the first time such request has been made in the area, to request the use of armed forces from the United States Army through the liaison officer assigned to the area. No Operating Manager shall have the authority to make a request for military protection directly to any officer of the War Department or of the United States Army.

V. TERMINATION OF GOVERNMENT CONTROL

40. *Method of Termination*

Government possession and control of any property affected by these regulations will be terminated by the Administrator upon a determination by him that the requirements for the termination of such possession and control specified in the War Labor Disputes Act of June 25, 1943, have been fulfilled.

Such termination shall be effected by a formal order of the Administrator or by specific notice to the Operating Manager specifying the effective time of such termination and requiring the posting of a notice thereof on the property. Notice of such formal order shall be given to the Operating Manager.

After the termination of Government possession and control, and for the purpose of ascertaining the existence and amount of any claims against the United States so that the administration of the provisions of Executive Order No. 9728 may be concluded in an orderly manner, the Administrator may require the submission by any mining company of information relating to operations during the period of Government possession and control as hereinafter provided.

The Operating Manager for the United States of each mining company with respect to which the United States Government has taken possession and control shall advise the Administrator when, in his opinion, such requirements for the termination of such possession and control have been fulfilled, specifying the date of declared restoration

of productive efficiency, and furnishing to the Administrator the factual evidence supporting his opinion.

Forthwith upon the termination of such possession and control by the Administrator, the mining company may elect to execute and deliver to the Administrator one of the two instruments described in paragraphs (1) and (2) below:

Either:

(1) The mining company, by a duly authorized officer or agent, not later than ten days subsequent to such termination, unless such period is extended by the Administrator for good cause shown, shall execute and deliver to the Administrator an instrument of ratification (in the form to be prescribed by the Administrator) by which the mining company adopts and ratifies all acts performed by, and omissions of, the Operating Manager for the United States in the operation of the coal mines of the company during the period of Government control, and covenants and agrees that the Government of the United States and its officials shall not be subject to any claims by the mining company or others by reason of the possession and control of the coal mines of the mining company.

The execution and delivery to the Administrator of such an instrument (hereinafter called Instrument No. 1) shall be deemed to constitute a waiver by the Government of all rights which it may have to an accounting with respect to all operations during the period of Government possession and control, and a discharge of the Operating Manager for the United States from any liability to the Government with respect to all actions taken by him as such, and, unless otherwise directed by the Administrator, the termination of the appointment of the Operating Manager for the United States without further action by the Administrator.

Or:

(2) The mining company, by a duly authorized officer or agent, not later than ten days subsequent to such termination, unless such period is extended by the Administrator for good cause shown, shall execute and deliver to the Administrator an instrument which specifically reserves to the mining company the right to assert a claim for damage alleged to have been suffered by it during the period of Government possession and control as the direct result of a specific direction or order of the Administrator, or his duly authorized agent, but which in all other respects is the same as Instrument No. 1.

Such instruments shall—

(a) specify the particular direction or order of the Administrator which the mining company asserts directly resulted in damage to the mining company,

(b) specify the particular action taken pursuant to such direction or order, which action would not have been taken except for such direction or order, and which action, it is claimed, resulted in damage to the mining company; and

(c) specify the nature of the damage asserted to have been so caused and the amount thereof.

The execution and delivery to the Administrator of such an instrument (hereinafter called Instrument No. 2), provided such instrument is in conformity with the above prescribed requirements, shall be deemed to constitute a waiver by the Government of all rights which it may have to an accounting with respect to all operations during the period of Government possession and control, expressly reserving the right, however, to assert by way of offset to any such claimed liability, benefits resulting to the mining company from Government possession and control and any other defense against such asserted liability. The execution and delivery to the Administrator of such an Instrument No. 2 shall further be deemed to constitute a discharge of the Operating Manager for the United States from any liability to the Government with respect to all actions taken by him as such and, unless otherwise directed by the Administrator, a termination of the appointment of such Operating Manager without further action by the Administrator.

The mining company shall sepcify to the Administrator such further detailed information with respect to items (a), (b) and (c), above, as shall be requested or directed by the Administrator.

If, however, within ten days after the termination of possession and control by the Government, unless such period is extended by the Administrator for good cause shown, the mining company shall not execute and deliver to the Administrator either Instrument No. 1 or Instrument No. 2, as above provided, then the Administrator may assume that the mining company claims, or reserves the right to claim, that all operations during the period of Government possession and control of the property have been for the account of the Government, and accordingly that the Operating Manager for the United States and the mining company are accountable to the Government for their custodianship and disposition of proceeds from operations accruing during the period of Government possession and control. Pending the completion of such an accounting, the appointment of the Operating Manager for the United States shall continue in force for the purpose of such an accounting and appropriate determination with respect thereto.

Accordingly, in such an event the Operating Manager for the United States and the mining company shall forthwith cause to be prepared, and shall promptly furnish to the Administrator, the following:

1. A detailed Comparative Balance Sheet as of the date of the termination of Government possession and control and as of the date of the beginning of such period.

2. A detailed Statement of Income and Profit and Loss for the period of Government possession and control.

3. A physical inventory to be taken at the close of such period, for all items normally subject to inventory.

4. A Cost and Tonnage Statement for the period in the form to be prescribed by the Administrator.

5. A detailed analysis of all changes in Current Assets, Investments, Reserves, Fixed Assets and Deferred Charges accounts occurring during the period.

6. A detailed statement of all charges to Bad Debts or against Reserves therefor.

7. An explanation of the basis of charges for Depreciation, Depletion and Amortization for the period.

8. A detailed analysis of all changes in amounts due to or from affiliated companies.

Statements required under items 1 and 2 are to be certified by an independent Certified Public Accountant unless otherwise directed by the Administrator on the application for good cause shown by the mining company. Statements required under items 3 through 8 are to be certified by an authorized officer of the company.

In addition to the foregoing, the Operating Manager for the United States and the company shall furnish to the Administrator such additional data and information as the Administrator shall request or direct pertaining to the period of operation under Government possession and control and a fair evaluation of the results thereof.

For the purposes of checking any inventories, accountings or other information submitted under this Section 40, accountants and other agents of the Government shall be given reasonable access to all books, papers, and inventories of the mining company pertinent thereto.

The books and records of the mining company covering operations during the period of Government possession and control shall be maintained intact pending the completion by accountants or other agents of the Government of such inspection thereof as may be deemed necessary by the Administrator. The books and records of the mining company pertaining to operations subsequent to the termination of Government possession and control, and pending such inspection, shall be maintained in such fashion that the effect of such operations upon the condition of the company as of the end of the period of Government possession and control will be readily ascertainable.

None of the provisions of this Section 40, and no action that shall be taken pursuant to any of them, shall be deemed to constitute acquiescence by the Administrator in any claim that operations during the period of Government possession and control were for the financial account of the Government, or acquiescence in any other claim that the Government is subject to any liability to the mining company or any other person or persons with respect to any such action, or otherwise. None of the provisions of this section, nor any action taken pursuant to any of them shall be deemed to constitute a waiver by the mining company of any right which it may have to assert a claim against the United States, except as waived by the execution and delivery of Instrument No. 1 or of Instrument No. 2.

50. *Regulations Superseded; Exceptions*

The provisions of these regulations supersede as of the effective date hereof the provisions of "Regulations for the Operation of Coal Mines under Government Control," issued by the Secretary of the Interior on May 19, 1943, as amended July 29, August 13, and December 23, 1943 (8 F. R. 6655, 10712, 11344, 17339), and made applicable to the mines possession of which was taken pursuant to Executive Order No. 9728 of 21 May 1946 except that criminal liabilities of

any person, and civil rights, duties, and liabilities of any person and of the United States of America, thereunder, shall not be affected.

BEN MOREELL,
Coal Mines Administrator.

Effective Date: 12:01 A. M., July 8, 1946.

OFFICE OF DEPUTY COAL MINES ADMINISTRATOR

APPENDIX A TO REGULATIONS

List of Area Officers-in-Charge and their locations and areas

Area No.	Area officer	Address	Producing districts
I	G. E. Slocum, Comdr. (S), U. S. N. R.	311 Old Post Office Bldg., Smithfield St. and 4th Ave., Pittsburgh 22, Pa.	1, 2, 3, 4, 6.
II	J. G. King, Comdr. (S), U. S. N. R.	Ashland Oil & Refining Bldg., 1409-13 Winchester Avenue, Ashland, Ky.	7, 8, 9, 13.
III	W. G. Triest, Comdr., CEC, U. S. N. R.	Suite 1123, Merchandise Mart Bldg., 222 W. Bank Drive N., Chicago, Ill.	5, 10, 11, 12.
IV	J. S. Stevenson, Comdr., CEC, U. S. N. R.	Pratt & Whitney Plant, Bannister Rd. & Troost Ave., Kansas City, Mo.	14, 15.
V	L. E. Smith, Comdr., SC (S), U. S. N. R.	General Land Office, c/o Supervisor of Surveys, 534 U. S. Nat'l. Bank Bldg., Denver, Colo.	16, 17, 18, 19, 20, 22, 23.

Government's Exhibit 27

UNITED STATES DEPARTMENT OF THE INTERIOR

COAL MINES ADMINISTRATION

Washington 25, D. C.

Order No. CMAN-2

Subject: Interim Safety Requirements for Mines in Government Possession under Executive Order 9728 Pending Formulation of Federal Mine Safety Code Pursuant to Section 2 (a) of Agreement between Coal Mines Administrator and United Mine Workers of America.

Under the provisions of Section 2 (a) of the Agreement between the Coal Mines Administrator and the United Mine Workers of America, dated May 29, 1946, the Director of the Bureau of Mines is required, after consultation with representatives of the United Mine Workers and such other persons as he deems appropriate, to issue as soon as practicable and not later than 30 days from May 29, 1946, a reasonable code of standards and rules pertaining to safety conditions and practices in the mines. The Coal Mines Administrator is required to put this code into effect at the mines in Government possession and control under Executive Order 9728.

The Director of the Bureau of Mines has appointed a committee to advise and assist him in the formulation of the mine safety code to be issued pursuant to Section 2 (a) of the above-described Agreement. This committee comprises the following: Dr. R. R. Sayers, Director of the Bureau of Mines, who is the Chairman of the Committee; Mr. A. D. Lewis and Mr. Harrison Combs, representing the United Mine

Workers of America; Mr. G. H. Sambrook and Mr. A. J. Bartlett, representing the coal operators; and Mr. John E. Jones, representing the Coal Mines Administrator.

The Safety Committee of the Director of the Bureau of Mines has recommended to the Coal Mines Administrator that, pending the formulation and placing into effect of the Federal Mine Safety Code to be issued pursuant to Section 2 (a) of the aforementioned Agreement, certain safety standards and rules which are recommended for observance from time to time at particular mining properties by inspectors of the United States Bureau of Mines should be made to apply to the mines in the possession of the Government under Executive Order 9728. It is the further opinion of the Committee that, in making any such recommendations with respect to individual mining properties in the possession of the United States, inspectors of the United States Bureau of Mines should be guided by the Inspection Standards for Bituminous Coal and Lignite Mines contained in Information Circular 7333 of the Bureau of Mines, United States Department of the Interior (revised July 1945).

Now, therefore, pursuant to authority granted to the undersigned by Executive Order 9728 (11 F. R. 5593) and the orders of the Secretary of the Interior, it is hereby ordered and directed that, pending the formulation and placing into effect of the Federal Mine Safety Code to be issued pursuant to Section 2 (a) of the afore-mentioned Agreement, Operating Managers for the United States at any and all mines in Government possession under Executive Order 9728 shall observe such safety standards and rules which may be recommended for observance at any particular mining property by inspectors of the United States Bureau of Mines, and which are based upon the Inspection Standards for Bituminous Coal and Lignite Mines contained in Information Circular 7333 of the Bureau of Mines, United States Department of the Interior (revised July 1945). Provided, however, that if, in the opinion of any Operating Manager for the United States, any recommendation thus made by an inspector of the United States Bureau of Mines would interfere seriously with the operation of a miner or would result in the closing of a mine, the Operating Manager shall immediately submit a statement to the Coal Mines Administrator setting forth the reasons why such recommendation should not be placed into effect, and such recommendation shall not become effective except to the extent which the Coal Mines Administrator may thereafter specifically order. Provided further that in those instances where an inspector of the United States Bureau of Mines finds that an imminent danger exists, he shall take immediate action to remove all workmen from the unsafe area until such danger is removed.

This Order shall terminate as soon as the Federal Mine Safety Code to be issued pursuant to Section 2 (a) of the Agreement between the Coal Mines Administrator and the United Mine Workers of America dated May 29, 1946, is placed into effect by the Coal Mines Administrator. Nothing in this Order, or any action taken by an inspector of the United States Bureau of Mines or the Coal Mines Administrator under this Order, shall be construed to require the Director of the Bureau of Mines, in formulating the new Federal Mine Safety Code, to adopt or include in such Code any action, recommendation or find-

ing made pursuant to this Order or any of the safety rules or standards of the United States Bureau of Mines whether referred to in this Order or otherwise.

B. MORRELL,
Coal Mines Administrator.

JUNE 7, 1946.

Government's Exhibit 28.

UNITED STATES
DEPARTMENT OF THE INTERIOR

J. A. KRUG, Secretary

BUREAU OF MINES
R. R. SAYERS, Director

FEDERAL MINE SAFETY CODE FOR BITUMINOUS COAL AND LIGNITE MINES OF THE UNITED STATES

JULY 24, 1946

[SEAL]

United States Government Printing Office
Washington 1946

For sale by the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C. Price 25 cents

UNITED STATES DEPARTMENT OF THE INTERIOR,
COAL MINES ADMINISTRATION,
Washington 25, D. C.

ORDER NO. CMAN-4

Subject: Federal Mine Safety Code:

Pursuant to the provisions of section 2 (a) of the agreement between the Coal Mines Administrator and the United Mine Workers of America, dated May 29, 1946, the Director of the Bureau of Mines, after consultation with a committee composed of two representatives of the United Mine Workers of America, two representatives of the bituminous coal industry, and a representative from the Office of the Coal Mines Administrator, has issued a reasonable code of standards and rules pertaining to safety conditions and practices in the mines.

Now, therefore, pursuant to said section 2 of said agreement, Executive Order 9728 (11 F. R. 5593) and Executive Order 9758 and the orders of the Secretary of the Interior, said code issued by the Director of the Bureau of Mines and entitled "Federal Mine Safety Code for Bituminous Coal and Lignite Mines of the United States," dated July 24, 1946, a copy of which is attached hereto and made a part hereof, is hereby put into effect for all mines in the possession and under the control of the Government pursuant to said Executive Orders 9728 and 9758.

This order shall become effective 12:01 a. m., July 29, 1946.

In accordance with its terms Order No. CMAN–2 of the Coal Mines Administrator, dated June 7, 1946, is hereby terminated, effective at close of business July 28, 1946.

A document entitled Order No. CMAN–4, dated June 26, 1946, which was given limited distribution in error but which was not authorized or duly promulgated, should be disregarded.

B. MOREELL,
Coal Mines Administrator.

JULY 24, 1946.

UNITED STATES DEPARTMENT OF THE INTERIOR,
COAL MINES ADMINISTRATION,
Washington 25, D. C.

ADMINISTRATOR'S MEMORANDUM NO. 5

1. Simultaneously with the issuance of this memorandum the Coal Mines Administrator is issuing his Order No. CMAN—4 putting into effect, in all mines in the possession and control of the Government under Executive Orders 9728 and 9758, the Federal Mine Safety Code provided for and required by section 2 (a) of the agreement dated May 29, 1946, between the Coal Mines Administrator and the United Mine Workers of America.

2. This code has been prepared and issued after preliminary consultation with representatives of the United Mine Workers of America, the operators, and the Coal Mines Administrator. A reasonable opportunity for further consultation was afforded all interested persons before the code was issued in the form in which it is now being promulgated.

3. Preparation of the code presented difficult and complex questions due, among other things, to the necessity for continuing maximum production consistent with reasonable safety conditions and practices in the mines and the wide variety of types, conditions, and methods of mines and mining to which the code must be made applicable.

4. Every attempt has been made to draft a code applicable to all mines under Government possession; but, as contemplated by section 2 (a) of the agreement of May 29, 1946, and article XIV, section 2 of the code, it is subject to review and revision. This is desirable to avoid interference with the maximum production of coal consistent with safety in the mines, or when revision is desirable to improve the provisions of the code with respect to safety requirements and practices. All interested parties are requested to bring to the attention of the Administrator any recommendations which they may have looking to review and revision of the code for the purposes stated above or for clarifying and improving its intent and meaning.

5. As provided by section 2 (a) of the agreement of May 29, 1946, the code provides "reasonable standards and rules pertaining to *safety* conditions and practices in the mines." Although not a part of the code, because they are not required by such provision, the Administrator strongly recommends the adoption of reasonable standards and practices which will improve the health and welfare of mine workers

in and about the mines. Particular reference is made to providing adequate wash houses, which the Administrator understands are already provided in a substantial part of the industry, and the elimination of unhealthy, noisome, and hazardous mine dumps, or similar waste disposal. The code does not require closed (permissible) electric cap lamps in mines where gases have not been discovered because to so require would be inconsistent with other provisions in the code regarding equipment and practices in such mines. Nevertheless, the Administrator strongly recommends the use of such lamps in all mines.

6. The Administrator makes no claim of infallibility for this Federal Mine Safety Code. The code is the result of intensive study and labor by the Director of the Bureau of Mines and his staff, assisted by representatives of the United Mine Workers of America, the operators, and the Coal Mines Administrator. Undoubtedly as experience is acquired in the administration of the code, there will be revealed desirable additions, deletions, and modifications, and it is hoped that the same cooperative effort which resulted in the preparation of the code will be available for its improvement.

7. Certainly no code can be effective unless it has the wholehearted support of all interested parties. The Administrator bespeaks such support for this first attempt at a comprehensive, industry-wide safety code.

B. MOREELL,
Coal Mines Administrator.

JULY 24, 1946.

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FEDERAL MINE SAFETY CODE FOR BITUMINOUS COAL AND LIGNITE MINES OF THE UNITED STATES

Pursuant to the authority outlined in section 2 (a) of the agreement between the Secretary of the Interior, acting as Coal Mines Administrator under the authority of Executive Order 9728 (dated May 21, 1946, 11 F. R. 5593), and the United Mine Workers of America, which agreement provides for the issuance by the Director of the United States Bureau of Mines of a reasonable code of standards and rules pertaining to safety conditions and practices in the coal mines of the United States, the following code is herewith promulgated in the interest of safety of mine workers at the mines in the possession of the United States under said Executive order.

No provision made herein shall be construed or operate to nullify any existing contract between mine employees and mine management or to nullify any existing State statutes, but this code is intended to supplement the aforesaid statutes in the interest of increased mine safety. All mines shall be inspected in accordance with the Federal Coal Mine Inspection and Investigation Act (see article XII, section 5*a*, of this code) by inspectors of the Federal Bureau of Mines. Any violations of this code shall be reported to the Coal Mines Administrator.

ARTICLE 1—SURFACE STRUCTURES

SECTION 1. *Tipple and cleaning plant.*—*a.* In dusty locations, electric motors, switches, and controls shall be of dusttight construction. Open-type motors, switches, or controls now in use in tipples and cleaning plants in dusty locations may be continued in use until such dusttight equipment can be procured, or until they can be corrected with reasonably dusttight housings or enclosures.

b. Structures shall be kept free of coal-dust accumulations.

c. Where coal is dumped at or near air-intake openings, reasonable provisions shall be made to prevent the dust from entering the mine.

d. Where repairs are being made to the plant, proper scaffolding and proper overhead protection shall be provided for workmen wherever necessary.

3 *e.* Welding shall not be done in dusty atmospheres or dusty locations, and firefighting apparatus shall be readily available during welding.

SEC. 2. *Lamp house.*—*a.* Naphtha or other flammable liquids in lamp houses shall be kept in approved containers or other safe dispensers.

b. Flame safety lamps shall be permissible and maintained in permissible condition. All flame safety lamps shall be checked by the persons using them, by a qualified lamp attendant, or by a fire boss, immediately before entering the mine.

c. When not in service, flame safety lamps and electric cap lamps shall be under the charge of a responsible person.

SEC. 3. *Stairways, ladders, and platforms.*—

a. Stairways, ladders, elevated platforms, and runways shall be equipped with handrails.

b. Elevated platforms and stairways shall be provided with toeboards where necessary, and they shall be kept clear of refuse and maintained in good repair.

SEC. 4. *Housekeeping.*—*a.* Good housekeeping shall be practiced in and around mine buildings and yards. Such practices include cleanliness, orderly storage of materials, and the removal of possible
4 sources of injury, such as stumbling hazards, protruding nails, and broken glass.

ARTICLE II—MISCELLANEOUS SURFACE CONDITIONS

SECTION 1. *Surface fire prevention.*—*a.* Oil, grease, and similar flammable materials shall be stored in closed containers, separate from other materials so as not to create a fire hazard to nearby buildings or mines. If oil or grease is stored in a building, the building or the room in which it is stored shall be of fire-resistive material and well ventilated. Tight metal receptacles shall be provided for oily waste.

b. Smoking in or about surface structures shall be restricted to places where it will not cause fire or an explosion.

c. Unless existing structures located within 100 feet of any mine opening are of reasonably fireproof construction, fire doors shall be erected at effective points in mine openings to prevent smoke or fire from outside sources endangering men working underground. These doors shall be tested at least monthly to insure effective operation.

ARTICLE III—TIMBERING

SECTION 1. *Timbering system.*—*a.* Minimum standards for
5 systematic timbering suitable to the roof conditions and mining system of each mine shall be adopted. The minimum standards of timbering shall be complied with by workmen and officials, and additional timbering shall be done wherever it is necessary to afford adequate protection.

SEC. 2. *Timber supply and timbering.*—*a.* At each mine, the management shall provide at or near the face workings an ample supply of timber and cap pieces or wedges of proper size with which to timber working places in a safe manner.

b. Temporary safety posts, jacks, or cross bars shall be set close to the face when necessary, before other mining operations are begun, and as needed thereafter.

c. All underground working places shall be timbered sufficiently to protect employees working at the face from falls of roof, ribs, or face. Loose top and overhanging or loose faces and ribs shall be either timbered adequately or taken down.

d. Timber removed by cutting-machine or loading-machine operators or knocked out by blasting shall be replaced promptly, unless they are not needed for adequate roof support or protection.

6 SEC. 3. *Testing of roof, ribs, and face.*—*a.* It shall be the duty of the mine foreman or mine manager, assistant mine foreman, and mine inspectors to ascertain if workmen understood roof, rib, and face testing. Uninformed workmen and new employees shall be instructed properly in correct methods of testing.

b. Face workers and other employees exposed to hazards from falls of rock and coal shall, unless this testing is specifically and satisfactorily performed by others, examine and test the roof, ribs, and face before starting work or before starting a machine and frequently thereafter. When dangerous conditions are found, they shall be corrected immediately by taking down loose material or by proper and adequate timbering before work is continued or any other work is done.

c. During work on any shift, the mine foreman or mine manager in charge of the shift or his designated assistants shall examine, or cause to be examined by a competent person, roof, ribs, and face of working places and passageways where men travel, for dangerous conditions. Where found, such dangerous conditions shall be corrected promptly by removing loose roof or rib, by adequate tim-
7 bering, or duplication of defective timbering where necessary. Such timbering shall conform to the clearance provisions hereinafter provided.

d. When there is danger of coal rolling on a person during or after undercutting or center cutting, it shall be spragged by placing blocks in the cut or by blocking with leaning posts.

SEC. 4. *Removal of timber.*—*a.* In worked-out places where timber are being removed, persons engaged in drawing timber shall not be permitted to work alone.

ARTICLE IV—EXPLOSIVES AND BLASTING

SECTION 1. *Surface magazines.*—*a.* Separate surface magazines shall be provided for the storage of explosives, detonators, and Cardox heater elements.

b. Surface magazines for storing and distributing high explosives in amounts exceeding 125 pounds shall be:

1. Reasonably bulletproof and constructed of incombustible material or covered with fire-resistive material. The roofs of magazines so located that it is impossible to fire bullets directly through the roof from the ground need not be bulletproof, but where it is possible to fire bullets directly through them, roofs shall be made bullet-resistant by material construction, or by a ceiling that forms a tray con-

taining not less than a 4-inch thickness of sand, or by other methods.

2. Provided with doors constructed of ⅜-inch steel plate lined with a 2-inch thickness of wood, or the equivalent.

3. Provided with floors made of wood or other nonsparking material and have no metal exposed inside the magazine.

4. Provided with suitable warning signs so located that a bullet passing directly through the face of a sign will not strike the magazine.

5. Provided with properly screened ventilators.

6. Equipped with no openings except for entrance and ventilation.

7. Kept locked securely when unattended.

c. Surface magazines for storing black blasting powder, detonators, and Cardox heater elements need not be bulletproof, but they shall be in accordance with other provisions for storing high explosives.

d. High explosives, black blasting powder, or Cardox heater elements in amounts of 125 pounds or less or 5,000 detonators or less shall be stored in accordance with preceding standards or in separate box-type magazines. Box-type magazines may also be used as distributing magazines when quantities do not exceed those mentioned. Box-type magazines shall be constructed strongly of 2-inch hardwood or the equivalent. Metal magazines shall be lined with nonsparking material. No magazines shall be placed in a building containing oil, grease, gasoline, waste paper, or other highly inflammable material, nor shall a magazine be placed less than 20 feet from a stove, furnace, open fire, or flame.

e. After the effective date of this code, and where practicable, the location of magazines shall be not less than 200 feet from any mine opening unless effectively barricaded.

f. The supply kept in distributing magazines shall be limited to approximately 1 day's requirements, and such supplies of explosives and detonators may be distributed from the same magazine, if separated by at least a 6 inch substantially fastened hardwood partition or the equivalent.

g. The area surrounding magazines for not less than 25 feet in all directions shall be kept free of rubbish, dry grass, or other materials of a combustible nature.

h. If the explosives magazine is illuminated electrically, the lamps shall be of explosion-proof type, installed and wired so as to present minimum fire and contact hazards.

i. Only nonmetallic tools shall be used for opening containers. Extraneous materials shall not be stored in an explosives or detonator magazine.

j. Smoking, carrying smokers' articles, or open flame shall be prohibited in or near any magazine.

SEC. 2. *Cardox charging station.—a.* A Cardox charging station shall:

1. Be in a fireproof structure on the surface or isolated from other operations in the same building by a substantial fireproof partition.

2. Be provided with at least two methods of relieving excess pressure in the storage tank. If one of these methods is a valve, the valve shall be tested monthly.

3. Have a box-type magazine or equivalent for storing the daily supply of heater elements.

SEC. 3. *Underground transportation.—a.* Individual containers used to carry permissible explosives or detonators shall be constructed of substantial nonconductive material. Other explosives shall be carried in rigid nonconductive containers. The container shall be closed and maintained in good condition.

b. When explosives or detonators are transported underground by locomotive, rope, or shuttle car, they shall be in covered cars or in special containers.

1. The bodies and covers of special cars and the containers shall be constructed of nonconductive material.

2. If explosives and detonators are hauled in the same explosives car or in the same special container, they shall be separated by at least a 4 inch substantially fastened hardwood partition or the equivalent.

3. Permissible explosives and detonators not to exceed 1 day's supply may be carried on the same trip with workmen, where this is now the practice, provided that individual special containers are constructed of substantial, rigid, nonconductive material and explosives and detonators are carried in separate containers.

4. Nonpermissible explosives shall not be carried on man-trips or material trips, but only on special trips. Cardox shells shall not be carried on man-trips.

5. Where quantities of explosives and detonators are transported in special cars or in special containers in cars (not carried by individual workmen on man-trips), they shall be hauled on special trip, not connected to any other trip, and shall not be hauled into or out of a mine within 5 minutes preceding or following a man-trip or any other trip.

c. Explosives and detonators shall be transported underground by belt only under the following conditions:

1. In the original and unopened case, in special closed cases constructed of nonconductive material, or in suitable individual containers.

2. Clearance requirements shall be the same as those for transporting men on belts (article VII, section 7*i*).

3. Suitable loading and unloading stations shall be provided.

4. There shall be an attendant at loading and unloading points and stop controls at these points.

d. Explosives or detonators shall not be transported on flight or shaking conveyors, or by scraper or mechanical loading machines.

SEC. 4. *Underground storage.—a.* Underground section boxes or magazines shall be of substantial construction and placed in a crosscut or idle room neck at least 25 feet from roadways or trolley wires and in a reasonably dry and well-rock-dusted place.

b. When such section boxes or magazines are used, the explosives and detonators shall be kept in separate boxes or magazines, or if kept in the same box they shall be separated by at least a 4 inch substantially fastened hardwood partition or the equivalent. Not more than a 48-hour supply of explosives, including any surplus remaining from the previous day, shall be stored underground in such boxes or magazines.

c. Explosives kept near the working faces in individual containers shall be kept not less than 15 feet from rail or power lines, except that if kept in a niche in the rib, the distance shall be at least 5 feet, and in a location out of line of blast where they will not likely be subjected to shock. Detonators shall be kept in a separate container under similar conditions.

d. Explosives and detonators shall be kept in their containers until removed for use at the working faces.

SEC. 5. *Blasting practices.—a.* In all mines, for the blasting of coal or other blasting operations, permissible explosives or permissible blasting devices shall be used except as hereinafter provided for. The use of permissible explosives shall comply with the following:

1. Fired only with electric detonators of proper strength.

14 2. Fired with permissible single-shot blasting units or permissible multiple-shot blasting units (when available), unless blasting is done from the surface.

3. Boreholes in coal shall not be drilled beyond the back of the cut, nor into the solid rib, roof, or floor.

4. Boreholes shall be cleaned and checked to see that they are placed properly and are of correct depth, in relation to the cut, before being charged.

5. To prevent blow-throughs, all portions of the boreholes, where the height of the coal permits, shall have a burden in all directions of at least 18 inches before being fired.

6. Boreholes shall be stemmed with at least 24 inches of incombustible material, or at least one-half of the length of the hole shall be stemmed if the hole is less than 4 feet in depth.

7. Examinations for gas shall be made immediately before and after firing each shot where on-shift shooting is done. (See article V, section 10a.)

b. Charges exceeding 1½ pounds, but not exceeding 3 pounds, shall be used only if boreholes are 6 feet or more in depth, and explosives are charged in a continuous train, with no cartridges deliberately deformed or crushed, with all cartridges in contact with each

15 other, and with the end cartridges touching the back of the hole and the stemming, respectively, and class A or class B permissible explosives are used.

c. Shots shall be fired by certified shot firers. In the absence of State certification, competent persons shall be designated to fire shots. The shot firer or such designated person shall comply with the requirements of sections 5 and 6 of article IV.

d. In mines where shooting is done on shift, all shots or series of shots shall be fired immediately after charging.

e. Only wooden tamping bars shall be used when charging holes.

f. Leg wires of electric detonators shall be kept shunted or the ends twisted together until ready to connect to the firing cable.

g. Shots shall not be fired from the power or signal circuit while any men are in the mine.

h. Roof and faces of working places shall be tested before and after blasting on shift.

i. Ample warning shall be given before shots are fired, and care shall be taken to ascertain that all persons are in the clear. Men shall

be removed from adjoining working places when there is danger of a shot blowing through.

16 *j.* Mixed charges shall not be charged or fired in any bore-hole.

k. Adobe (mudcap) or other open, unconfined shots shall not be fired in any mine.

SEC. 6. *Blasting cables.*—*a.* Blasting cables shall be:

1. Well-insulated and as long as may be necessary to permit the shot firer to get in a safe place around a corner.

2. Short-circuited at the battery end until ready to attach to the blasting unit.

3. Staggered as to length or kept well-separated when attached to the detonator leg wires.

4. Kept clear of power wires and all other possible sources of active or stray currents.

SEC. 7. *Black blasting powder.*—*a.* The storage, handling, and use of black blasting powder in any form for blasting purposes in mines is herewith declared dangerous. However, because of physical characteristics of some coal beds and surrounding strata, certain mines are now using black powder for blasting. Where black blasting powder is used, the following shall apply:

1. The provisions governing the handling, transportation, and storage of permissible explosives underground shall apply to

17 the handling, transportation, and storage of granular or pellet black powder, except that black blasting powder shall be hauled only on special trips.

2. Blasting with granular or pellet black powder shall be done after the end of the shift when all men are out of the mine, except the necessary number of men to perform the actual shooting: *Provided, however,* That black powder may be fired on shift if it is proved to the satisfaction of the Director of the United States Bureau of Mines that 0.25 percent of methane or more by chemical analysis cannot be found in the mine, that rock dusting is maintained in accordance with provisions of article VI, section 2, that the use of permissible explosives would interfere seriously with the operation of a mine or destroy the marketability of the coal, or that the physical conditions and cycle of operation are such that blasting cannot be done on the off-shift: *And provided further,* That pending establishment of the conditions stated above, which shall be done promptly, on-shift blasting may continue.

3. At every mine where granular or pellet black powder is

18 used for blasting, shot firers shall be employed to charge, tamp, and fire all shots, and they shall be certified under the laws of the State in which the mine is located. In States where no provision is made for the certification of shot firers, competent and capable men shall be designated as shot firers.

4. Shot firers shall make an examination of each drill hole prior to charging.

5. Holes drilled on the solid into the ribs, roof, or floor shall not be charged or fired.

6. Center or breaking shots shall be fired first, and after these shots have exploded, the shot firer shall return and fire the remaining shots.

7. Shots shall be fired singly except when fired from the surface with all persons, including shot firers, out of the mine.

8. Boreholes shall not be underloaded or overloaded.

9. Granular black powder shall be inserted into each borehole in the form of a cartridge. Loose powder shall not be used.

10. Holes shall be tamped tightly to the mouth with incombustible material, and only wooden tamping bars shall be used.

11. The firing of shots shall be done with electric squibs and an electric blasting unit, and mine current shall not be used to set off shots unless all men, including shot firers, are out of the mine.

12. The firing cable shall be well-insulated and as long as may be necessary to permit the shot firer to get in a safe place around two corners.

13. Adobe (mudcap) or other open, unconfined shots shall not be fired in any mine.

SEC. 8. *Misfires.*—*a.* Where misfires occur with electric detonators or electric squibs, a waiting period of at least 5 minutes shall elapse before anyone returns to the shot. After such failure, the blasting cable shall be disconnected from the source of power and the battery end short-circuited before electric connections are examined.

b. Explosives shall be removed by firing a separate charge at least 2 feet away from, and parallel to, the misfired charge or by washing the stemming and the charge from the borehole with water, or by inserting and firing a new primer after the stemming has been washed out.

c. A very careful search of the working place, and, if necessary, of the coal after it reaches the tipple shall be made after blasting a misfired hole, to recover any undetonated explosive.

d. The handling of a misfired shot shall be under the direct supervision of the mine manager or mine foreman or a competent person designated by him.

SEC. 9. *Cardox.*—*a.* The provisions governing the handling, storage, and transportation of explosives shall apply to the heater elements of Cardox blasting devices prior to their installation in the shells.

b. Charged Cardox shells shall be transported underground in insulated cars or in insulated boxes placed in ordinary mine cars and shall be stored on wooden racks, built for that purpose, in a crosscut or an idle room neck, at least 10 feet from power lines and haulage tracks.

c. Where Cardox is used for blasting, the following shall apply:

1. Cardox shells need not be tamped or stemmed.

2. When Cardox is fired, all persons in the vicinity, including the shot firer, shall be around a second corner or in an equally safe place.

3. Blasting cables shall be as long as may be necessary to assure the safety of the shot firer, attached only after the charge has been placed in the borehole, and maintained in good repair.

4. The charge shall be detonated with a permissible shot-firing unit.

21 5. Cardox shall not be shot off the solid, over heavy rock binders or shale, or in a "tight" shot.

6. Cardox misfires caused by the failure of the disk to rupture shall not be removed from the hole until after the lapse of 15 minutes and shall be handled under the supervision of a foreman or other competent designated person.

7. Misfired shells shall be bled off promptly and marked conspicuously upon removal from the hole.

SEC. 10. *Airdox.—a.* Where Airdox is used for blasting or breaking down the coal, the following shall apply:

1. Compressed air shall be conducted from the compressor to within a practical working distance of the face by steel air lines tested to withstand an approximate pressure of 20,000 pounds a square inch.

2. Air lines shall be grounded at the compressor and, if possible, at other low-resistance ground connections along the lines, such as at borehole casings. They shall not be connected in any way to tracks, water lines, or other electric power return conductors and shall be suitably insulated where they cross electric wires or underneath the track.

22 3. Unions shall be installed in steel air lines at not more than 1,000-foot intervals.

4. Shut-off valves shall be installed every 1,000 feet in all Airdox lines and, in all branch lines, at a point near the main lines.

5. Airdox lines shall be protected at places where equipment passes over, under, or adjacent to them.

6. Steel or copper lines shall not be handled or repaired when air pressure is in the line.

7. Air lines shall be examined periodically for kinks or other weaknesses and replaced immediately when defects are found.

8. Copper tubing shall be coiled and uncoiled properly. The part of the tubing that is affected by frequent coiling and uncoiling shall be renewed periodically because of the dangers from kinks and crystallization.

9. Blow-down valves shall not be less than 45 feet from the face and shall be around a right angle.

10. Holes for Airdox tubes shall not be drilled on the solid.

11. The Airdox tube shall be pushed to the back of the drill hole and then withdrawn 6 to 12 inches to form an air cushion.

12. When blow-down valves are opened to discharge the Air-
23 dox tube, they shall remain open until time to place the tube in the next borehole.

13. After the breaking down of the coal in any one place, the tube shall be disconnected at once from the air line and not reconnected until ready to be used in the next place.

14. When an Airdox tube fails to discharge, the copper line leading to the tube shall be disconnected at the blow-down valve, and the tube shall be dragged by means of the copper line to an abandoned place, marked with warning signs, and left for 12 hours before any repair work is done thereon.

15. All persons shall be removed from adjoining working places where there is danger of breaking through and shall be at a safe distance around a right angle while coal breaking is in progress.

ARTICLE V—VENTILATION AND MINE GASES

SECTION 1. *Main fans.—a.* All main fans shall be installed on the surface in fireproof housings, situated not less than 15 feet from the nearest side of the mine opening, and be equipped with fireproof air ducts and ample pressure-relief or explosion doors. However, present fans that are offset any distance from the mine opening need not be moved if they otherwise comply with the provisions of this section.

In lieu of requirements for the location of the fan and the pressure-relief or explosion doors, the fan may be directly in front of, or over, the mine opening, provided the opening is not in direct line with possible forces coming out of the mine if an explosion occurs, and provided further that there is another opening having a weak-wall stopping or explosion doors that would be in direct line with the forces coming out of the mine if an explosion occurs, such opening to be not less than 15 feet nor more than 100 feet from the fan opening.

b. Main fans now located at the bottom of a shaft in fireproof surroundings may be continued in use. Future installations of a main fan at the bottom of a shaft may be permitted only after a finding by the Director of the United States Bureau of Mines that such installation is necessary, that it would not materially increase the hazards of the mine, and that conditions, such as a surface stand-by fan, and other safety requirements that he may prescribe, will be complied with.

c. Main mine fans shall be installed to permit the reversal of air flow, provided with a pressure-recording gage or water gage, and, unless the fan is attended constantly, an automatic device to give alarm when the fan slows down or stops. This device shall be placed so that it will be seen or heard by a responsible person.

d. The fan shall be on a separate power circuit, independent of the mine circuit. (See article V, section 10*a*.)

e. Main-fan installations shall be protected from wood fire, grass fire, and rubbish for at least 100 feet in all directions from the fan installations, where physical conditions permit.

f. The fan shall be inspected daily and a record kept of the inspection, which shall be open for inspection by interested persons.

g. When the main fan fails or stops, immediate action shall be taken to cut off the power and withdraw the men from the face regions of the mine. If ventilation is restored in a reasonable time, the face regions and other places where methane is likely to accumulate shall be reexamined by certified or capable supervisors, and if found to be free from explosive gas, power may be restored and work resumed. If ventilation is not restored in a reasonable time, all underground employees shall be removed from the mine. (See article V, section 10*a*.)

h. Main fans shall be operated continuously except when the mine is shut down with all men out of the mine. In such event, after the fan has been started, the mine shall be examined for gas and other hazards and made safe before men, other than the examiners, are permitted in the mine.

SEC. 2. *Booster and auxiliary fans.—a.* After the effective date of this code, the installation of booster fans shall not be permitted, unless

after a finding by the Director of the United States Bureau of Mines that such installation is necessary for the safe operation and proper ventilation of the mine, that it would not materially increase the hazard of the mine, and that such conditions and safeguards as he may prescribe will be complied with. In mines where such fans are now being used, their use may be continued, but they shall be surrounded with safeguards as follows:

1. The fan motor shall be an enclosed type, the surroundings of the fan fireproofed, and the fan installed and located so as to prevent recirculation of air.

2. Passageway by the fan installation shall be by means of an air-lock, the doors of which shall have at least 30 square feet cross-sectional area and open automatically when the fan stops operating.

27 3. In case of booster-fan stoppage, the procedure hereinbefore contained in this code with respect to stoppage of main fans shall apply to the section of the mine affected.

4. Inspected at least twice each shift and provided with a signal light, audible signal, or attended constantly.

b. Auxiliary or blower fans with tubing may be used to ventilate shaft and slope-sinking operations and their underground connections; the faces of rock tunnels being driven between two coal beds or through faults and wants, if they are powered with permissible driving units, operated continuously, inspected at least twice during each shift, and so placed that recirculation of air is not possible. (See article V, section 10*a*.)

c. After the effective date of this code, auxiliary or blower fans with tubing shall not be used, except as provided for in section 2b; however, the use of blower fans with tubing may be continued in mines where they are now being used, but they shall be surrounded with safeguards as follows:

1. The fan shall be powered with a permissible driving unit and installed on the intake-air side of the entrance of the place to
28 be ventilated so as to prevent the recirculation of air. (See article V, section 10*a*.)

2. The volume of air passing the fan shall not be less than 2½ times the capacity of the fan.

3. The fan tubing shall be maintained in good condition. The discharge end of the tubing shall be kept within 20 feet of the face, and not more than 300 feet of the tubing shall be extended from the fan.

4. Places ventilated by means of blower fans shall be examined for methane by a certified official or other competent person designated by the mine foreman or mine manager before the fan is started at the beginning of the shift and after the interruption of fan operation for 5 minutes or more during the shift. (See article V, section 10*a*.)

5. Accumulations of methane shall not be moved by means of a blower fan and tubing; only line brattice shall be used for this purpose.

6. The fan and tubing shall be inspected at least twice during each working shift.

SEC. 3. *Volume of air.—a.* The main intake air current shall be directed into the mine, and when necessary shall be divided into splits utilizing air crossings, where needed, so as to ventilate all parts of the mine effectively.

b. The number of men on a split shall conform to the requirements of the law of the State in which the mine is situated.

c. The quantity of air reaching the last open crosscut in any pair or set of entries shall not be less than 6,000 cubic feet a minute. However, the quantity of air reaching the last open crosscut in any pair or set of entries in pillar sections may be less than 6,000 cubic feet a minute, provided that at least 6,000 cubic feet of air a minute is being delivered to the intake end of the pillar line. Mines now operating without the prescribed quantity of air in the last open crosscut of each pair or set of entries may continue to operate in such manner, but prompt action shall be taken to deliver the required minimum volume of air in the last open crosscut of each pair or set of entries in the mine.

d. The air current at working faces shall under any condition have a sufficient volume and velocity to dilute and carry away smoke from blasting and any flammable or harmful gases.

e. At least once each week, the mine foreman or mine manager, his assistants, or other competent persons designated by the mine foreman or mine manager shall measure the volume of air near the main intake or main return, the amount passing through the last open crosscuts of entries, and the volume of air in each split. A record of these measurements shall be kept in a book on the surface and shall be open for inspection by interested persons.

SEC. 4. *Coursing of air.—a.* The main-intake and main-return air currents in slope mines driven after the effective date of this code shall be in separate openings. The main-intake and main-return air currents in a single shaft sunk after the effective date of this code shall be separated by a curtain wall or partition substantially constructed of fireproof material.

b. Underground stables, battery-charging stations, and transformer stations containing liquid-filled transformers shall be well-ventilated by separate splits of air conducted through vents to the return air courses and returning direct to the surface.

c. Changes in ventilation that may affect the safety of the men shall be made when the mine is idle and with no men in the mine, other than those engaged in changing the ventilation.

SEC. 5. *Quality of air.—a.* Air in which men work or travel in mines shall be improved when it contains less than 19.5 percent oxygen, more than 0.5 percent carbon dioxide, or is contaminated with noxious or poisonous gases.

b. If the air immediately returning from a split that ventilates any group of active workings contains more than 1.0 percent methane, as determined with a permissible flame safety lamp, by air analysis, or by other recognized means of accurate detection, the ventilation shall be improved.

c. If the air immediately returning from a split contains 1.5 percent methane, the employees shall be withdrawn from the mine or portion of the mine affected, and all power shall be cut off from said mine or portion of the mine until such dangerous condition has been corrected: *Provided, however,* That in virgin territory in those mines ventilated by exhaust fans, where methane is liberated in large amounts and a large volume of air is provided (double or more than the minimum

requirements contained in section 3*c* of this article), the methane content in a split may exceed 1.5 percent but shall not exceed 2.0 percent: *Provided further*, That only permissible electric equipment is used, that the air does not pass over trolley or other bare power wires, and that a certified official is continually testing the gas content of the air during mining operations.

d. At working faces and other places where methane has
32 accumulated and is likely to attain an explosive mixture, blasting shall not be done and the men shall be removed from such working faces or places until such condition has been corrected.

e. When the methane content of air in face operations exceeds 1 percent at any point not less than 12 inches from the roof, face, or rib, as determined by a permissible methane detector, a permissible flame safety lamp, or chemical analysis, this condition shall be corrected by improving the ventilation promptly.

SEC. 6. *Crosscuts and stoppings.—a*. Crosscuts between entries and rooms shall be made at intervals consistent with practice in the States where mine operations are conducted.

b. Crosscuts between entries shall be closed, except the last one in a pair or set of entries.

c. Where necessary to obtain a movement of air to the face of a room to clear the room of flammable or noxious gases, crosscuts between rooms shall be closed, except the one nearest the face.

d. Where practicable, a crosscut shall be provided at or near the face of each entry or room before the place is abandoned.

e. Entries, rooms, or chutes shall not be turned off an entry beyond the last crosscut. This does not apply to the driving of such
33 places to make a connection at the first crosscut or similar passageway used as a main airway in connection with an entry. It does apply to extending such places beyond the airway before the main intake and return passageways are connected.

f. On entries other than room entries, stoppings in crosscuts between intake and return airways shall be built of solid, substantial, incombustible material, such as concrete, concrete blocks, brick, or tile. In mines where physical conditions exist because of heavy or caving ground so as to make the use of concrete, concrete blocks, brick, or tile impracticable, timbers laid longitudinally "skin to skin" may be used.

SEC. 7. *Doors and overcasts.—a*. Doors used on main-entry or cross-entry (entries from which room entries are turned) haulage roads, which when open would connect intake and return air courses ventilating the mine in by such doors, shall be built to allow minimum leakage of air and shall be in pairs to provide an air lock large enough to contain an entire trip: *Provided, however*, When only a single door is installed, such single door shall be attended except in the case of panel or room entries in process of development. Where air-
lock doors are provided, there shall be sufficient leakage to
34 prevent accumulations of methane between the doors.

b. Doors shall be kept closed except when men or equipment is passing through the doorways. Motor crews and other persons who open doors shall see that the doors are closed before leaving them.

c. Overcasts shall be constructed tightly of incombustible material, such as masonry, concrete, concrete blocks, or prefabricated metal, of sufficient strength to withstand possible falls from the roof, and be of ample area to pass the required quantity of air.

SEC. 8. *Line brattice.*—*a.* Substantially constructed line brattice shall be used from the last open crosscut of an entry or room, when necessary to remove gases, explosive fumes, and smoke. When damaged by falls or otherwise they shall be repaired promptly.

b. The space between the line brattice and the rib shall be large enough to permit the flow of a sufficient volume of air to keep the working face clear of flammable and noxious gases.

c. Flame-resistive brattice cloth shall be used in the construction of line brattice.

SEC. 9. *Old workings.*—*a.* Abandoned workings shall be posted to warn unauthorized persons against entering the territory.

35 *b.* Abandoned workings shall be sealed or ventilated. The sealing or ventilating of abandoned workings shall be governed by the law or practice in the State where the mine is operated.

c. Where practice is to seal abandoned workings, the sealing shall be done in a substantial manner with incombustible material. In every sealed area, one or more of the seals shall be fitted with a pipe and cap or valve to permit the gases behind the seals to be sampled and also to provide a means of determining any existing hydrostatic pressure.

d. Air that has passed through abandoned sections or that has been used to ventilate pillar lines shall not be reused to ventilate live workings. Mines that cannot comply with this requirement may continue to operate as at present until future mine development and ventilation can be changed to permit compliance with this section. (See article V, section 10*a*.)

SEC. 10. *Examinations for gas and dangerous conditions.*—*a.* Any mine in which methane has been ignited or has been found by a permissible flame safety lamp or by air analysis in an amount of 0.25 percent or more in any open workings shall be operated in full

36 compliance with this code. However, a mine in which methane has not been detected shall be exempted from compliance with the following provisions or the part thereof indicated:

Article IV, section 5*a*7.

Article V, sections 1*d*; 1*q*; 2*b*; 2*c*1 (Permissible driving unit only); 2*c*4; 9*d*; 10*c*; 10*j* (Gas and oxygen testing only); and 10*k* (Gas testing only).

Article VII, section 6*d* (Except open-flame trip lights shall not be used).

Article VIII, sections 9*a*; 9*c*; 9*d*; 9*f* (Gas testing only); and 9*h*.

Article XI, sections 5*a*; 6*a*; 6*b* (Gas testing only).

Article XII, sections 1*c* (Permissible cap lamp and flash lamp only).

The exemptions from compliance hereinbefore provided for shall continue until the presence of gas in the mine has been verified by the United States Bureau of Mines and the operating manager advised thereof.

b. Not less than two permissible flame safety lamps in proper working condition shall be kept available at each mine for the use of authorized persons. Only permissible flame safety lamps, methane detectors, or air sampling and analysis shall be used for determining the presence of methane in mine air.

c. Mine officials whose regular duties require them to inspect working places shall have in their possession, when underground, a permissible flame safety lamp in safe working condition, for the detection of methane and oxygen deficiency. (See article V, section 10*a*.)

d. Fire bosses or mine examiners shall make examinations of all mines before other men are permitted to enter, and they shall begin their examination in the first working place in their assigned territory not more than 4 hours before the first shift enters the mine; however, such examinations in multiple-shift operations may be made by certified officials or other competent persons designated by the mine foreman or mine manager within 4 hours of the entrance of the next or succeeding shift, provided that in mines in which gas has not been found, such examination need be made only once in 24 hours.

e. The duties of the fire boss or mine examiner shall be to visit every live working place in the mine; test with a permissible flame safety lamp for accumulations of methane, noxious gases, and oxygen deficiency; examine seals and doors; test and inspect the roof, face, and rib conditions on active roadways and travelways, approaches to abandoned workings, and accessible falls in active sections for explosive gas and other hazards; be certain that the air is traveling in its regular course in each split; and place his initials and the date at or near the face of each place examined.

f. Where dangerous conditions are found by the fire boss or mine examiner (or other official), the place shall be marked out with a DANGER sign and no one except an authorized person shall cross the DANGER sign and then only for the purpose of correcting the dangerous condition.

g. Upon completion of his examination, the fire boss or mine examiner shall report to a proper official on the surface or report at a designated underground station any defects found, before the men enter the mine or pass such designated station.

h. The fire boss or mine examiner shall record in ink or indelible pencil the result of his inspection in a book, kept on the surface for that purpose. Similar records may also be kept at designated stations underground.

i. Idle and abandoned sections shall be inspected for gas and other dangerous conditions by a certified foreman or fire boss immediately before other employees are permitted to enter or work in such place.

j. At least once during each shift while the men are in the mine, or oftener if necessary for safety, the mine manager or mine foreman, his designated assistants, or other designated competent persons shall examine all working places with a permissible flame safety lamp for methane, noxious gases, oxygen deficiency, and other hazards. Any dangerous condition found shall be corrected promptly. (See article V, section 10*a*.)

k. Pillar workings shall be examined for explosive gas and other dangers before a fall is made. If methane is found in amounts that can be detected with a permissible flame safety lamp, the fall shall not be made until the gas is removed or other precautions taken to safeguard all employees. (See article V, section 10*a*.)

l. At least once each week air samples shall be collected for analysis, or tests for methane shall be made in all mines with a permissible methane indicator or a permissible flame safety lamp by the mine foreman or mine manager or other competent person designated by him, in the return of each split immediately outby the last working
40 place, in the main return, pillar falls, seals, abandoned workings, and entrances thereto, who shall also make an examination for other dangerous conditions; leave his initials and date at the places examined; and, if dangerous conditions are found, they shall be corrected promptly. A record of these tests and examinations shall be kept.

m. The mine foreman or mine manager shall read and countersign the record book of the fire bosses or mine examiners daily and read and countersign the daily and weekly reports of assistant mine foremen, or where existing State laws require other procedure such signing shall be done in accordance with prevailing practice. Where such reports disclose any dangerous conditions prompt action shall be taken to have them corrected. The superintendent or official in charge of the mine shall also read and countersign the daily and weekly reports of mine officials.

n. All records of daily and weekly reports shall be open for inspection by interested persons.

ARTICLE VI—COAL AND ROCK DUST

SECTION 1. *Control of coal dust.—a.* Coal dust shall not be permitted to accumulate excessively on roadways and along conveyor lines.

41 *b.* Where mining operations raise an excessive amount of dust into the air, water or water with a wetting agent added to it or other effective methods shall be used to allay such dust at its source.

SEC. 2. *Rock dusting.—a.* All mines, except those mines or those locations in a mine which are too wet or too high in incombustible content to propagate an explosion, shall be rock-dusted to within 80 feet of the faces of rooms and entries; however, if the mine or any part of it is wet but becomes dry, the mine or portion of the mine so affected shall be rock-dusted as soon as it becomes dry.

b. In mines partially rock-dusted or in mines that are required to start rock dusting, haulageways and parallel entries connected thereto by open crosscuts shall be rock-dusted. Back entries shall be rock-dusted for at least 1,000 feet outby the junction with the first active entry. Inby this junction, the rooms, entries, and crosscuts shall be rock-dusted by generalized rock dusting as provided for in section 2*a*.

c. Where rock dust is applied, it shall be distributed upon the top floor, and sides of all open places and maintained in such quantity that the incombustible content of the mine dust will not be less

42 than 65 percent. In trackless entries and air courses, protection in lieu of generalized rock dusting may be had by using bags filled with rock dust, if they are placed at regular intervals and staggered as described in Bureau of Mines Report of Investigations 3411.

d. When methane is present in any ventilating current, the 65 percent of incombusible matter shall be increased 1 percent for each 0.1 percent methane.

e. Pending tests to be conducted at the Experimental mine, variations of the method described in Report of Investigations 3411 may be continued in mines now using or starting to use the bag method. After completion of these tests, the Director of the Bureau of Mines will review the results of the tests and will issue a revision of article VI, section 2.

ARTICLE VII—TRANPORTATION

SECTION 1. *Hoisting.—a.* A qualified hoisting engineer shall be on duty continuously when men are underground.

b. Hoists used for handling men shall be equipped with overspeed, overwind, and automatic stop controls, unless a second engineer is on duty.

c. At the beginning of each shift and after the hoist has
43 been idle, the hoisting engineer shall operate the cages up and down the shaft at least one round trip before hoisting or lowering men. Similar procedure shall be followed in slope hoisting, except that an attendant may ride on the trip.

d. Slope, shaft, or incline-plane hoists shall be equipped with brakes capable of stopping and holding the fully loaded unbalanced cage or trip at any point in the shaft, slope, or on the incline.

e. An accurate and reliable indicator, showing the position of the cage or trip, shall be placed so as to be in clear view of the engineer, unless the position of the car or trip is clearly visible to the engineer at all times.

f. Hoisting equipment shall be inspected daily and a record made of such inspection, which shall be open for inspection by interested persons.

g. Hoisting ropes on all cages or trips shall be adequate in size to handle the load and have a proper factor of safety as defined in the American Standards Association's Wire Rope Standards and shall be replaced when it shows more than six broken wires in any single pitch length or lay of rope.

h. The rope shall have at least three full turns on the drum
44 when extended to its maximum working length and shall make at least one full turn on the drum shaft or around the spoke of the drum (in case of a free drum) and be fastened securely by means of clamps.

i. A hoisting rope shall be fastened to its load by a spelter-filled socket or by a thimble and clamps.

SEC. 2. *Cages and shafts.—a.* Cages used for hoisting men shall be of substantial construction; with adequate steel bonnets; with enclosed sides; with gates, safety chains, or bars across the ends of the cage

when men are being hoisted or lowered; and men with sufficient handholds or chains for all men on the cage to maintain their balance.

b. The floor of the cage shall be constructed so that it will be adequate to carry the load and so that it will be impossible for a workman's foot or body to enter any opening in the bottom of the cage.

c. Cages used for handling men shall be equipped with safety catches that act quickly and effectively in an emergency.

d. Cages shall be inspected daily. A test of safety catches on cages shall be made at least every 2 months. A written record shall be kept of inspections and tests, which shall be open for inspection by interested persons.

45 *e.* The speed of the cage when hoisting or lowering men, unless regulated by State laws, shall not exceed 900 feet a minute.

f. There shall be at least two independent methods of signaling, one of which shall be audible to the engineer, from all landings in shafts and slopes.

g. An approved signal code shall be in use at each mine and shall be posted prominently in the engine room in easy sight of the engineer and at all places where signals are given.

h. Workmen shall wear safety belts while doing repair work in or over shafts.

i. An attendant shall be on duty at all cage stations when men are being hoisted or lowered at the beginning and end of each operating shift and when men are working in the shaft.

j. Shafts shall be equipped with self-closing or manually controlled safety gates at surface landings.

k. Positive stop blocks or derails shall be placed near shaft surface landings.

l. At the bottom of each hoisting shaft and at intermediate landings, a "run-around" shall be provided for safe passage from one side of the shaft to the other. This passageway shall be not less than 5 feet in height and 3 feet in width.

46 SEC. 3. *Haulage roads.—a.* The roadbed, rails, joints, switches, frogs, and other elements of the track of all haulage roads shall be constructed, installed, and maintained in a manner consistent with speed and type of haulage operations being conducted to insure safe operation.

b. Track switches, except room and entry development switches, shall be provided with properly installed throws, bridle bars, and guardrails; switch throws and stands, where possible, shall be placed on the clearance side.

SEC. 4. *Clearance and shelter holes.—a.* Haulage roads on entries developed after the effective date of this code shall have a continuous unobstructed clearance of at least 24 inches from the farthest projection of moving equipment.

b. On haulage roads where trolley lines are used, the clearance shall be on the side opposite the trolley lines.

c. On the trolley-wire or "tight" side, there shall be sufficient clearance to prevent the farthest projection of moving equipment from rubbing or coming in contact with ribs or timber.

d. After the effective date of this code, all new sidetracks, partings, or entries equipped with more than one track shall have a
47 clearance of at least 24 inches between the outermost projection of moving traffic.

e. The clearance space on all haulage roads on entries driven before or after the effective date of this code shall be kept free of loose rock, coal, supplies, or other materials, provided that not more than 24 inches need be kept free of obstructions.

f. Ample clearance shall be provided at all points where supplies are loaded or unloaded along haulage roads or conveyors.

g. Where it is necessary for men to cross conveyors regularly and where the width of conveyors or low roof introduces a hazard, suitable cross-over bridges shall be provided.

h. Shelter holes shall be provided along haulage entries driven after the effective date of this code where locomotive, rope, animal, or shuttle-car haulage is used. Such shelter holes shall be spaced not more than 80 feet apart. Except where the trolley wire is 6 feet or more above the roadbed or guarded effectively at the shelter holes, they shall be on the side of the entry opposite the trolley wire.

i. Shelter holes made after the effective date of this code shall be at least 5 feet in depth, not more than 4 feet in width, and 6 feet in
48 height or as high as the traveling space, if the traveling space is less than 6 feet high. Room necks and crosscuts may be used as shelter holes even though their width exceeds 4 feet.

j. Shelter holes shall be kept clear of refuse and other obstructions.

k. Shelter holes shall be provided at switch throws, except where more than 6 feet of clearance is maintained and at room switches.

l. At each landing of a slope where men are passing and cars are handled, a shelter hole at least 10 feet deep, 4 feet wide, and 6 feet high shall be provided.

SEC. 5. *Haulage equipment.—a.* Nonpermissible internal-combustion engines or other machinery which gives off noxious fumes shall not be permitted underground in any coal mine.

SEC. 6. *Safety devices and practices.—a.* Locomotives shall be equipped with proper devices for the rerailing of locomotives and cars.

b. An audible warning device and headlights shall be provided on each locomotive.

c. Where hoists are used for handling men in underground slopes, in pitching beds, or on slopes between two or more beds, the provisions governing hoisting or haulage mentioned heretofore shall apply.

d. A permissible trip light shall be used on the rear of trips
49 pulled, and on the front of trips lowered into slopes or pushed. Trip lights need not be used during gathering operations at working faces. The use of efficient reflectors in lieu of trip lights may be continued where now in use pending an investigation by the United States Bureau of Mines to determine the effectiveness of such reflectors. (See article V, section 10*a*.)

e. Pushing of cars on main haulage roads shall be prohibited, except where necessary to push cars from sidetracks to producing entries, where necessary to clear switches and sidetracks, and on the approach to cages.

f. Back-poling shall be prohibited except at places where the trolley pole cannot be reversed or when going up extremely steep grades and then only at very slow speed.

g. Other than the motorman and trip rider, no person shall ride on a locomotive unless authorized by the mine foreman, and no person shall ride on loaded cars or between cars of any trip, except that the trip rider may ride on the last car.

h. Motormen and brakemen shall not get on or off cars, trips, or locomotives in motion, except that a brakeman may get on or off the rear end of a slowly moving trip to throw a switch or to close a door.

50 *i.* All trips and all traffic equipment shall come to a complete stop before couplings are made by hand, unless a coupling hook is used.

j. Standing cars on any track, unless held effectively by brakes, shall be properly blocked or spragged. Cars shall be secured effectively at working faces.

k. On slopes and planes having a knuckle, there shall be a positive-acting stopblock, at or above the knuckle, and a derail.

l. On entries going to the rise, a positive stopblock or derail shall be placed outby the switch of the first active working place.

m. On entries going to the dip, a positive-acting stopblock or derail shall be placed just outby the switch to the first active working place, and a stopblock shall be placed just inby the switch of the last active working place.

n. When coal is not being loaded, but men are working at a room or entry face, a positive-acting stopblock or derail shall be placed across the room or entry track, or the room switch shall be kept closed to prevent cars from being inadvertently pushed or running into the places.

o. Slides, skids, or other adequate means shall be used on descending trips on grades where the locomotive is not adequate to control
51 the trip, and, where practicable, a drag shall be used on ascending trips.

p. Material being hauled inside the mine shall be so loaded and protected that there is no danger to the motorman or brakeman from sliding of equipment and material.

SEC. 7. *Transportation of men.*—*a.* Man-trips shall be operated at safe speeds consistent with the condition of roads and type of equipment used, but not to exceed 12 miles an hour.

b. Each man-trip shall be under the charge of a responsible person, and it shall be operated independently of any loaded trip of coal or other material.

c. Cars on the man-trip shall not be overloaded, and sufficient cars in good mechanical condition shall be provided.

d. No person shall ride under the trolley wire unless suitable covered man-cars are used.

e. No material or tools shall be transported in the same car with men on any man-trip, and all persons shall ride inside of man-trip cars, except the motorman and brakeman or trip rider.

f. Men shall not load or unload before the cars in which they are to ride or are riding come to a full stop, and men shall proceed in an orderly manner to and from man-trips.

52 *g.* A waiting station shall be provided where men are required to wait for man-trips or man-cages. It shall have sufficient room, ample clearance from moving equipment, and adequate seating facilities.

h. Trolley and power wires shall be guarded effectively at man-trip stations where there is a possibility of any person coming in contact with energized electric wiring while loading or unloading from the man-trip.

i. Where belts are used for transporting men, a minimum clearance of 18 inches shall be maintained between the belt and the roof or cross bars, projecting equipment, cap pieces, overhead cables, wiring, and other objects; but where the height of the coal bed permits, the clearance shall not be less than 24 inches.

j. The belt speed shall not exceed 250 feet a minute while men are loading, unloading, or being transported.

k. The space between men riding on a belt line shall be not less than 5 feet.

l. Loading and unloading stations shall be illuminated properly.

m. An official or some other person designated by the mine foreman shall supervise the loading and unloading of belts and man-trips.

53 ARTICLE VIII—ELECTRICITY

SECTION 1. *Surface transmission lines.—a.* Overhead high-potential power lines shall be placed at least 15 feet above the ground and 20 feet above driveways and haulageways, shall be installed on insulators, and shall be supported and guarded to prevent contact with other circuits.

b. Overhead power circuits shall be protected against lightning and voltage surges, and high-potential power lines shall be protected adequately by circuit breakers, fuses, or both.

c. Electric wiring in surface buildings shall be installed so as to present minimum fire and contact hazards.

SEC. 2. *Transformer stations.—a.* Unless surface transformers are isolated by elevation (8 feet or more above the ground), they shall be enclosed in a transformer house or surrounded by a suitable fence at least 6 feet high. If the enclosure is of metal, it shall be grounded effectively. The gate or door to the enclosure shall be kept locked at all times, unless authorized persons are present.

b. Surface transformers containing flammable oil and installed where they present a fire hazard (near mine openings or in or near combustible buildings) shall be provided with means to drain or to
54 confine the oil in event of rupture of the transformer casing.

c. Transformers ordered after the effective date of this code, both permanent and portable, for use underground shall be air-cooled or non-flammable-liquid-cooled.

d. Permanent underground stations containing transformers filled with flammable oil shall be provided with door sills, or their equivalent, that will confine the oil if leakage or explosion occurs.

e. Portable underground substations for transformers or other power-conversion equipment shall be in fireproof housings. Where the installation contains transformers filled with flammable oil, means shall be provided to confine the oil in event of leakage or explosion.

f. DANGER—HIGH VOLTAGE signs shall be posted conspicuously on all transformer enclosures, high-potential switchboards, and other high-potential installations.

SEC. 3. *Substations and switchboards.*—*a.* Permanent underground substations shall be in rooms of fireproof construction. Surface and underground substations shall be kept free from refuse, and metal containers shall be provided for oily waste.

55 *b.* Switchboards installed after the effective date of this code shall be located so that ample room will be provided between the switchboard and passageways or lanes of travel and shall have an entrance at each end to permit authorized persons to inspect, adjust, or repair apparatus back of the board. Switchboards shall have the entrance to the rear guarded against entrance of unauthorized persons, unless in a building that is kept locked.

c. Switchboards shall be well lighted for switch operations in the front and for repair and maintenance in the rear.

d. Rooms housing switchboards shall be free of debris and refuse.

e. Pull switches and circuit breakers, or other power controls, shall be mounted on slate or other suitable insulating material.

SEC. 4. *Power circuits.*—*a.* High-potential power cables (600 volts or more) carried from the surface through shafts, boreholes, and underground passageways shall be adequate for the services intended, installed in a permanent manner, and guarded from mechanical injury.

b. Power wires, whether bare or insulated, except ground wires, shall be supported on or by well-installed insulators and shall not touch combustible materials, roof, or ribs.

56 *c.* Power wires shall be insulated properly when passing through doors and stoppings and where they cross other power circuits.

d. Electric cables and wires, other than signal wires and trolley wires used for haulage, installed in haulage slopes shall be buried not less than 12 inches below combustible material or installed in fireproof protective conduit.

e. Where track is used as a power conductor:

1. Both rails of main-line tracks shall be well-bonded and cross-bonded at least every 200 feet; however, if the track circuit is paralleled with a feeder cable, both rails of the tracks shall be well-bonded, and cross-bonds shall be installed at least every 1,000 feet in both the track and feeder circuit.

2. At least one rail on secondary haulage roads shall be well-bonded, and cross-bonds shall be installed at least every 200 feet.

3. Switches on entries shall be well-bonded.

f. Power shall be disconnected before repair work is to be done on energized electric circuits or energized parts of electric equipment.

Employees required to make repairs on energized bare trolley lines should wear protective clothing, such as insulated shoes and lineman's gloves, or the power shall be disconnected.

57 *g.* Trolley and feeder wires shall be installed as follows:

1. On the opposite side of the entry from shelter holes and clearance space, except where 6 feet or more above the roadbed or adequately guarded at shelter holes.

2. The hangers on curves shall be spaced so that the trolley wire may become detached at any one hanger without exposing the locomotive operator to a shock hazard.

3. Alined properly and installed at least 6 inches outside the track-gage line.

4. Provided with cut-out switches at intervals of not more than 2,000 feet and near the beginning of all branch lines.

5. Kept taut and not permitted to touch the roof, rib, or cross bars; particular care shall be taken where they pass through door openings to preclude the possibility of bare wires coming in contact with combustible material.

6. Guarded adequately where it is necessary for men to pass or work under them regularly, unless the wires are more than 6½ feet above the top of the rail. They shall also be guarded adequately on both sides of doors.

7. Shall not extend beyond the last open cross-cut and shall be kept at least 150 feet from pillar workings.

8. Anchored securely and insulated properly at the ends.

58 9. Not in air known to contain 1.0 percent or more methane or in air returning from pillar recovery work or old workings where dangerous amounts of methane may be liberated suddenly, provided that, when this requirement is not being complied with, reasonable time may be allowed to make necessary changes.

SEC. 5. *Grounding.—a.* Metal conduit and metallic coverings and armor of cables shall be grounded and shall be electrically continuous to afford a conductor path for the ground circuit.

b. Metallic frames, casings, and other electric equipment that can become "alive" through failure of insulation or by contact with energized parts shall be grounded.

c. Casings of transformers shall be grounded unless protected by isolation (freedom from contact hazard by position).

d. Mining equipment mounted on rubber tires or caterpillar treads, receiving power through a trailing cable, purchased after the effective date of this code, shall be grounded effectively.

SEC. 6. *Circuit breakers and switches.—a.* Fuses or equivalent protective devices of the correct type and capacity shall be installed on electric equipment to protect against excessive overload. Wires

59 or other conducting materials shall not be used as a substitute for properly designed fuses, and where circuit breakers are used, they shall be maintained in good operating condition and adjusted so that equipment cannot be overloaded.

b. Switches and circuit breakers shall be installed so that they are readily accessible and can be operated without danger of contact with moving or live parts.

c. Disconnecting switches shall be installed in all main power circuits at the bottoms of shafts, boreholes, and other places where main power circuits enter the mine.

d. Underground electric equipment and circuits shall be provided with switches or other controls of safe design, construction, and installation.

e. Circuit breakers or other overload devices shall be provided to protect power circuits. If they are automatic, they shall be set so that the circuits cannot be overloaded.

f. Dry wooden platforms, rubber mats, or other electrically nonconductive material shall be kept in place at each switchboard and power-control switch, and at stationary machinery where shock hazards exist.

SEC. 7. *Telephone systems.—a.* Telephone service shall be
60 provided at the bottom of each main shaft or slope and in all mines from the surface to the working sections of the mine, where the mine workings are 1,500 feet or more from the surface.

b. Telephone lines, other than cables, shall be carried on insulators, installed on the opposite side from power or trolley wires, and where they cross power or trolley wires they shall be insulated adequately.

c. Telephone circuits on the surface shall be protected by lightning arresters.

SEC. 8. *Signal systems.—a.* Signal wires shall be supported on insulators and insulated properly where they cross power lines.

b. Bare signal wires that are readily accessible to personal contact shall not carry more than 30 volts. (This does not apply to block-signal systems.)

SEC. 9. *Electric face equipment.—a.* After the effective date of this code, all new electric face equipment and replacements of equipment purchased for mines where nonpermissible equipment is now being used shall be of a permissible type approved by the United States Bureau of Mines, except that explosion-tested cable-reel locomotives and shuttle cars may be used. This does not apply to equipment
61 ordered before the effective date of this code. (See article V, section 10*a*.)

b. Permissible junction or distribution boxes shall be used for making multiple-power connections in working places or other places where dangerous quantities of methane may be present or may enter the air current, except that where nonpermissible junction or distribution boxes are now in use, or on order, their use may be continued until such time as replacements are made.

c. Permissible equipment shall be maintained in a good state of repair and in permissible condition. (See article V, section 10*a*.)

d. In mines where nonpermissible equipment is now being used, care shall be taken to protect the workmen by making frequent examinations of the air for methane content and by preventing interruptions of the ventilating current. (See article V, section 10*a*.)

e. No electrically driven equipment shall be taken into or operated in a working place where 1.0 percent or more methane can be detected at any point not less than 12 inches from the roof, face, or rib with a permissible-flame safety lamp.

f. In all face working where electrically driven equipment
62 is operated, frequent inspections for methane shall be made. If a dangerous condition exists, the machines shall be stopped until such dangerous condition is removed. (See article V, section 10*a*.)

g. Electric drills or other electrically operated rotating tools intended to be held in the hands and post drills shall have the electric switch constructed so as to break the circuit when the hand releases the switch or shall be equipped with friction or safety clutches.

h. Explosion-tested cable-reel locomotives shall be equipped with two-conductor trailing cables. (See article V, section 10*a*.)

SEC. 10. *Trailing cables.—a.* All new trailing cables (when available) used on electric mine equipment shall be constructed of materials having fire-resistive qualities.

b. Cables for portable underground electric equipment shall be provided with suitable overload protection and power taps, unless properly connected to permissible junction or distribution boxes.

c. Temporary splices on trailing cables shall be made in a workmanlike manner, mechanically strong, and well-insulated.

SEC. 11. *Underground illumination.—a.* Electric light wires
63 shall be supported by suitable insulators and fastened securely to the power conductors.

b. Electric lights shall not be installed within 150 feet of pillar workings or advancing workings.

c. Electric lights shall be installed so that they cannot come in contact with combustible materials.

ARTICLE IX—SAFEGUARDS FOR MECHANICAL EQUIPMENT

SECTION 1. *Face equipment.—a.* The cutter chains of mining machines shall be locked securely to prevent accidental movement while being trammed or when parked.

b. Rock drilling with percussion drills shall be done wet, except as provided for in article XI, section 7*g*.

SEC. 2. *Shop and other equipment.—a.* The following shall be guarded adequately:

1. Gears, sprockets, friction devices, and couplings with protruding bolts or nuts.
2. Shafting and projecting shaft ends that are within 7 feet of floor or platform level.
3. Belt, chain, or rope drives that are within 7 feet of floor or platform.
64 4. Fly wheels. (Where fly wheels extend more than 7 feet above the floor, they shall be guarded to a height of at least 7 feet.)
5. Circular and band saws and planers.
6. Repair pits. (Guards shall be kept in place when the pits are not in use.)

b. Machinery shall not be repaired or oiled while in motion, unless such oiling can be done without danger to the oiler.

c. A guard or safety device removed from any machine shall be replaced before the machine is put in operation.

d. Mechanically operated grinding wheels shall be equipped with:
1. Safety washers and tool rests.
2. Substantial retaining hoods, the hood openings of which shall not expose more than 90° sector of the wheel.
3. Eye shields, unless goggles are worn by the operators.

ARTICLE X—UNDERGROUND FIRE PREVENTION, FIRE CONTROL, AND MINE DISASTERS

SECTION 1. *Fire prevention and control.—a.* Each mine shall be provided with suitable fire-fighting equipment, adequate for the size of the mine, such as supplies of rock dust at doors and at other strategic places, water lines, and hose, water or chemical trucks, and fire extinguishers.

65 *b.* Clean, dry sand, rock dust, or fire extinguishers, suitable from a toxic and shock standpoint, shall be provided and placed at each electrical station (substations, transformer stations, permanent pump stations) so as to be out of the smoke in case of a fire in the station.

c. After every blasting operation performed on shift by shot firers or other persons, an examination shall be made to determine whether fires have been started.

d. Should a fire occur, the person discovering it and any persons in the vicinity of the fire shall make a prompt effort to extinguish it.

e. If, or when, a fire has attained such proportions that an individual cannot extinguish it, he shall report immediately the existence of the fire to a competent official of the mine, who shall order all workmen from that part of the mine affected by the fire, except those needed for fire fighting.

f. If the fire gets out of control, men shall be withdrawn; and the part of the mine in which the fire is located or the entire mine, as conditions may require, shall be sealed or flooded.

g. All fire-fighting operations shall be under the direct supervision of the mine manager or mine foreman or a designated assistant
66 who shall consult with the Federal inspectors, who shall serve in an advisory capacity.

h. Underground storage places for lubricating oil and grease in excess of 2 days' supply shall be of fireproof construction.

i. Lubricating oil and grease kept in face regions or other working places shall be in portable, closed, metal containers.

j. Underground structures (transformer stations, battery-charging stations, substations, permanent pump rooms, etc.) installed after the effective date of this code shall be of fireproof construction. Where the fireproofing material is in contact with timber or coal, it shall not be of metal.

k. Hay or straw shall be transported from the surface to underground stables in enclosed incombustible cars. It shall be stored in a fireproof structure apart from the stable or in a fireproof compartment within the stable.

SEC. 2. *Mine disasters.—a.* When a disaster occurs in a mine, the nearest office of the United States Bureau of Mines and the proper State inspection authorities shall be notified promptly of such disas-

ter. All facilities of the mine shall be made available for recovery operations.

b. After a disaster, immediately following the recovery work
67 and before the wreckage and debris of the disaster are disturbed, a committee of Federal coal-mine inspectors designated by the Director of the United States Bureau of Mines shall make an investigation as to the cause of the disaster and make recommendations to prevent a repetition. The findings of this committee shall be presented in written form; a condensed copy shall be posted on the bulletin board of the mine; complete copies shall be supplied the management the State inspection bureaus, officers of the United Mine Workers of America, and the United States Bureau of Mines and such report or reports shall be publicized. This investigation and a report shall be made within 10 days after the completion of the recovery operations. Where conditions are such that recovery operations are prolonged over an extended period, interim reports shall be made and publicized.

c. After a disaster, when the mine has been placed in condition to operate, an inspection of such mine in its entirety shall be made by a Federal coal-mine inspector; and if such inspection discloses any dangerous conditions, they shall be reported immediately to the operating manager or his representative and to the Coal Mines Administrator. If the Coal Mines Administrator so directs, the
68 mine shall not resume operations until the dangerous conditions are corrected.

ARTICLE XI—MISCELLANEOUS

SECTION 1. *Mine map.—a.* An accurate map of the mine, brought up to date at least every 6 months, shall be kept posted in a place accessible to employees: *Provided, however,* That such a map of a mine producing a maximum of 1,000 tons per day or less need not be brought up to date more often than once a year.

SEC. 2. *Oil and gas wells.—a.* The drilling and sealing of oil and gas wells penetrating coal beds or open workings of mines shall be done in compliance with State statutes.

SEC. 3. *Approaching abandoned workings.—a.* Whenever any working place approaches within 200 feet of abandoned workings that cannot be inspected and that may contain dangerous accumulations of water or gas, boreholes shall be kept at least 20 feet in advance of the face, and 45° angle rib holes shall be drilled at least 20 feet deep and not more than 8 feet apart.

SEC. 4. *Mine openings and escapeways.—a.* Every underground mine shall have at least two separate surface openings.
69 *b.* Main slope or drift openings shall be separated by at least 50 feet of natural ground in all mines opened after the effective date of this code.

c. New shafts and partitions therein, made after the effective date of this code, shall be fireproof. Buntons and guides may be of wood.

d. Mine openings at isolated locations, where there is danger of fire entering the mine, shall have adequate protection against surface fires entering the mine.

e. Not more than 20 persons shall be allowed at any one time in the mine until a connection has been made between the 2 mine openings, and work shall be prosecuted with reasonable diligence.

f. When only 1 main opening is available, owing to final mining of pillars, not more than 20 persons shall be allowed in such mine at any one time.

g. There shall be at least two travelable passageways, to be designated as escapeways, from each working section to the surface whether the mine openings are shafts, slopes, or drifts. They shall be kept in safe condition for travel and reasonably free from standing water and other obstructions. One of the designated escape-
70 ways may be the haulage road: *Provided, however,* That one of the escapeways shall be ventilated with intake air. At mines now operating with only one free passageway to the surface, immediate action shall be taken to provide a second passageway.

h. Where the designated escapeways are shafts:

1. They shall be equipped with hoist and cage, or with travelable stairway, or ladders. No shaft more than 30 feet deep sunk after the effective date of this code shall be equipped with ladders.

2. Stairways shall be of substantial construction set at an angle not greater than 45° with the horizontal, and equipped on at least one side with a suitable handrail; landing platforms shall be at least 2 feet wide and 4 feet long and shall be railed properly.

3. Ladders shall be anchored securely.

4. Where ladders, or stairways set at an angle greater than 45°, are now installed, their use may be continued provided they are of substantial construction, with platforms at intervals of not more than 30 feet and equipped with a hand rail in the case of stairways.

i. If a designated escapeway is a slope of not more than 45°,
71 it shall be equipped with a stairway or adequate walkway with cleats. If the slope is more than 45°, stairway shall be installed.

j. Direction signs shall be posted conspicuously to indicate manways and designated escapeways.

SEC. 5. *Cap lamps and checking systems.*—*a.* All workmen and other persons underground shall use only permissible electric cap lamps for portable illumination. This does not preclude the use of other types of permissible electric lamps. Mines now operating with open-light equipment may continue to so operate until permissible electric cap lamps can be secured from suppliers. (See article V, section 10*a*.)

b. Each mine shall have a check-in and check-out system that will provide positive identification upon the person of every individual underground. An accurate record of the men in the mine, which shall consist of a written record, a check board, or a time-clock record, shall be kept on the surface in a place that will not be affected in the event of an explosion. Said record shall bear a number identical to the identification check carried by the person underground.

SEC. 6. *Arcs, sparks, and flames.*—*a.* Because of explosion
72 and fire hazards, all persons in underground workings of a mine are herewith prohibited from intentionally creating any arc, spark, or open flame, except those that cannot be avoided in the normal performance of work. The carrying of matches or other

flame-making devices into a mine shall be prohibited. (See article V, section 10*a*.)

b. Welding and cutting (with electricity or flame) shall be restricted to places where trolley locomotives are permitted under the provisions of this code, except that where it is necessary to do welding and cutting in face regions, such work shall be under the direct supervision of a certified official, who shall test for gas before starting operations and frequently thereafter. In all welding and cutting operations, precautions shall be taken against starting a fire; and the area shall be rock-dusted. (See article V, section 10*a*.)

SEC. 7. *Protective clothing.*—*a*. All persons shall wear protective hats while underground and also while on the surface where falling objects may cause injury.

b. Protective footwear shall be worn by employees, officials, and others while on duty in and around a mine where falling objects may cause injury.

73 *c*. All employees inside or outside of mines shall wear approved-type goggles where there is a hazard from flying particles.

d. Welders and helpers shall use proper shields or goggles to protect their eyes.

e. Employees engaged in haulage operations and other persons employed around moving equipment on the surface and underground shall wear snug-fitting clothing.

f. Protective gloves shall be worn when material which may injure the hands is handled, but gloves with gauntlet cuffs shall not be worn around moving equipment.

g. Men exposed for short periods to gas, dust, fume, and mist-inhalation hazards shall wear permissible respiratory equipment. When the exposure is for prolonged periods, other measures to protect workmen or to reduce the hazard shall be taken.

SEC. 8. *Definitions.*—*a*. The words "interested persons" as used in this code shall be construed to mean: Members of the Mine Safety Committee; all other authorized representatives of the United Mine Workers of America; Federal, State, and county coal-mine inspectors; and, to the extent required by State law, any other persons.

74 ARTICLE XII—GENERAL SAFETY CONDITIONS

SECTION 1. *Duties, qualifications, and certification of persons employed underground.*—*a*. The mine manager or mine foreman in charge of a mine shall be certified as being qualified under the laws of the State in which the mine is operated. His duties shall be to supervise the operation of the mine; to check the ventilating system of the mine to see that air is traveling its regular course; to order prompt correction of all existing dangerous conditions; to see that workmen are supplied with timber of proper length, quantity, and quality, and other supplies necessary for the operation of the mine; to supervise the handling of explosives; and to supervise the operation of the mine to protect the life and limb of employees—all in accordance with this code and applicable State laws.

b. A mine manager or mine foreman may designate assistants who shall be duly qualified for their position under the laws of the State in which the mine is operated and may delegate to them authority and duties such as are specified in this code.

c. Fire bosses or mine examiners shall be certified as such or be the possessor of a mine-foreman or mine-manager certificate issued under the laws of the State in which the mine is operated, or be qualified and competent persons appointed by the management; and their duties shall be to examine the mine as required in article V, section 10*d*, 10*e*, 10*f*, 10*g*, and 10*h*. Fire bosses or mine examiners shall be equipped with permissible flame safety lamps and with permissible cap lamps or flash lamps. They shall also have a suitable device for testing roof and ribs. (See article V, section 10*a*.)

d. Shot firers, electricians, machine operators, and other persons whose duties include the testing for gas shall be qualified for their respective occupations under the laws of the State in which the mine is operated. In States which have no laws qualifying such persons, the mine manager or mine foreman shall designate competent workmen to perform such duties.

e. In States that require certification of miners, all miners shall secure such certificates in accordance with requirements.

f. The certificates of competency, as hereinbefore stated, shall be made a matter of record on the surface of the mine, and this record shall be available for inspection by interested persons.

SEC. 2. *Reporting of accidents.*—*a.* The management of a mine shall keep an accurate record of all accidents occurring at the mine that involve an injury to an employee (lost-time and no-lost-time accidents). A record of all accidents resulting in loss of time beyond the day of injury, together with the required employment and production data, shall be reported on forms 6–1420 and 6–1420A to the United States Bureau of Mines at the end of each calendar month, except that an immediate report shall be made to the United States Bureau of Mines of any accident involving a fatality. The United States Bureau of Mines shall compile a record of fatal and nonfatal accidents on a basis of man-hours of exposure; an annual report on a calendar-year basis of such accidents shall be published and shall be furnished to the officers of the United Mine Workers of America and to the executives of the coal industry.

SEC. 3. *Reporting of hazards.*—*a.* Any employee of a mine or any representative of the employees of a mine who discovers an unsafe condition in the mine shall immediately report such unsafe condition to his immediate supervisor and, if not corrected in a reasonable time, to the safety committee of the mine.

SEC. 4. *First aid and medical care.*—*a.* Each mine shall have an adequate supply of first-aid equipment to be used in case of injury to employees, and such supplies shall be located on the surface, at the bottom of shafts and slopes, and at other strategic locations near the working faces. The first-aid supplies shall be encased in suitable sanitary receptacles designed to be reasonably dusttight and moistureproof and shall be available to all persons employed in the mine. In addition to the material in the cases, splints, blankets, and

stretchers necessary for the treatment of injuries and for the transportation of injured persons shall be provided.

b. When an injury occurs, a doctor shall be notified immediately, and the injured person shall be brought promptly to the surface.

SEC. 5. *Duties of Federal coal-mine inspectors.—a.* Federal coal-mine inspectors shall make inspections of mines in accordance with the provisions contained in this code and shall report any and all violations of this code to the Coal Mines Administrator through the Director of the United States Bureau of Mines. They have authority also, as provided for in H. R. 2082, Public Law 49, 77th Congress, to make recommendations for improving health and safety conditions or practices not specifically covered by the Federal Mine Safety Code.

b. In those special instances where a Federal coal-mine inspector finds that an imminent danger exists, he shall take immediate
78 action through the operating manager or his representative, to have all workmen withdrawn from the unsafe area until such danger is corrected.

SEC. 6. *Duty and responsibility of management.—a.* It shall be the duty of the superintendent, mine foreman or mine manager, and his assistants, fire bosses or mine examiners, and other officials to see that the provisions contained in this code are complied with.

SEC. 7. *Duty and responsibility of mine workers.—a.* It shall be the duty of the mine workers to comply with this code and to cooperate with management in the enforcement of its provisions. Reasonable rules and regulations of the operators for the protection of mine workers and preservation of property that do not lower or impair the provisions of this code shall be complied with.

ARTICLE XIII—STRIP-MINING CODE

SECTION 1. *Tiple and cleaning plant.—a.* The provisions contained in this Federal Mine Safety Code, article I, section 1, shall apply.

SEC. 2. *Stairways, supply house, housekeeping, and yards.—a.* The provisions contained in Information Circular 7350, entitled "Inspection Standards for Strip Mines (Coal and Lignite)," issued
79 March 1946 by the United States Department of the Interior, Bureau of Mines, shall apply as follows:

1. Supply house (1.12 to and including 1.15).
2. Stairways, ladders, toeboards, and railings (1.16 to and including 1.21).
3. Housekeeping, illumination, and heating (1.22 and 1.23).
4. Yards and storage of material (2.05 and 2.06).

SEC. 3. *Fire prevention.—a.* The provisions contained in this Federal Mine Safety Code, article II, section 1, shall apply.

SEC. 4. *Mining methods, conditions, and equipment.—a.* Stripping and drilling overburden.

1. The provisions contained in Information Circular 7350, entitled "Inspection Standards for Strip Mines (Coal and Lignite)," shall apply, except that standards 3.04 and 3.05 may be excluded.

SEC. 5. *Explosives, detonators, and blasting.—a.* The provisions contained in Information Circular 7350, entitled "Inspection Standards for Strip Mines (Coal and Lignite)," shall apply, except that

in lieu of standards 4.06 and 4.11, article IV, section 1, paragraphs *h* and *j* of this Federal Mine Safety Code shall apply.

80 SEC. 6. *Haulage.—a.* The provisions contained in Information Circular 7350, entitled "Inspection Standards for Strip Mines (Coal and Lignite)," shall apply, except that standards 5.02, 5.09, 5.10, 5.13, 5.36, and 5.47b shall be excluded; and in lieu of standard 5.10, article VII, section 6*k* of this Federal Mine Safety Code shall apply.

SEC. 7. *Electricity.—a.* The provisions contained in Information Circular 7350, entitled "Inspection Standards for Strip Mines (Coal and Lignite)," shall apply.

SEC. 8. *Additional safeguards for mechanical equipment.—a.* Shop equipment.

1. The provisions contained in this Federal Mine Safety Code, article IX, section 2, shall apply.

b. Stripping and loading equipment.

1. The provisions contained in Information Circular 7350, entitled "Inspection Standards for Strip Mines (Coal and Lignite)," shall apply (standards 7.14 to and including 7.24).

SEC. 9. *Miscellaneous hazards.—a.* The provisions contained in Information Circular 7350, entitled "Inspection Standards for Strip Mines (Coal and Lignite)," shall apply as follows:

1. Lighting (standards 8.01 and 8.02).

2. Protective clothing (standards 8.03 to and including 8.09).

81 SEC. 10. *General safety conditions.—a.* The provisions contained in Information Circular 7350, entitled "Inspection Standards for Strip Mines (Coal and Lignite)," shall apply as follows:

1. Safety rules and standards (standard 9.02).

2. *Accidents.*—The reporting of accidents shall be in accordance with provisions of the Federal Mine Safety Code, article XII, section 2.

3. First aid (standards 9.14 and 9.15).

ARTICLE XIV—ENFORCEMENT; REVIEW AND REVISION

SECTION 1. *Enforcement.—a.* The Coal Mines Administrator is the exclusive agency charged with the enforcement of this code and the correction of violations thereof.

b. When noncompliance with this code is found by a Federal coal-mine inspector, it shall be reported promptly to the operating manager of the mine (or the resident official in charge of the mine) with recommendations for the elimination of such noncompliance. If such noncompliance is not promptly eliminated, it shall be reported by the inspector to the Director of the Bureau of Mines, who shall,

82 after such review and investigation as he shall deem advisable, report it to the Coal Mines Administrator, with his recommendations and findings as to such noncompliance and appropriate means for the correction thereof. If the operating manager, acting as representative of the operating management, wishes to contest the charge of noncompliance, he shall promptly advise the Coal Mines Administrator of his position and contentions in writing. The Coal

Mines Administrator shall, after such investigation and hearings as he shall consider necessary, take appropriate action to enforce compliance with the code. In special instances where a Federal coal-mine inspector finds that imminent and serious danger to employees in the mine exists, he shall promptly advise the operating manager or his representative at the mine, as provided in article XII, section 5*b*, and report by telephone to the Director of the Bureau of Mines, who shall report the matter immediately to the Coal Mines Administrator. The Administrator or his representative shall take immediate action to cause all employees to be removed from the unsafe area until any imminent and serious danger is removed. Such action shall be subject to immediate review by the Coal Mines Administrator; and further proceedings with respect thereto, as provided above, shall be promptly had and concluded.

83 SEC. 2. *Review and revision.—a.* From time to time the Director of the Bureau of Mines may, upon request of the Coal Mines Administrator or United Mine Workers of America, review and revise the provisions of this code. Such review and revision may be with respect to its general application, its application to types, conditions, and methods of mining and mines, or its application in specific cases. Such review and revision shall be made whenever appropriate to carry out the intent and purposes of the agreement between the Secretary of the Interior, acting as Coal Mines Administrator, and the United Mine Workers of America, dated May 29, 1946, requiring a reasonable code of standards and rules pertaining to safety conditions and practices in mines. Pending review and revision, as herein provided, the Coal Mines Administrator may suspend or stay, for such periods as he deems reasonable, the provisions of this code as applied to any mine or mines when such suspension or stay is necessary, in his opinion, to carry out and comply with the purposes and provisions of Executive Order 9728 or in order to avoid irreparable damage or great injustice pending review and revision of specified provisions of the code.

84 ARTICLE XV—COMPLIANCE WITH CODE

SECTION 1. *Compliance with code.—a.* Whenever any equipment or supplies required by this code, including rock-dusting machines, flame safety lamps, and permissible electric equipment, are unobtainable, compliance with the requirements of this code with respect thereto is suspended to the extent that such items remain unobtainable until they are obtainable. Due allowance shall also be made for planning, institution of changed procedures, and installation of new equipment.

b. Compliance with the requirements of this code shall be started promptly and prosecuted diligently until the provisions of the code have been fulfilled.

R. R. SAYERS,
Director, Bureau of Mines.

Approved:

J. A. KRUG.
Secretary of the Interior.

Government's Exhibit 29

UNITED STATES DEPARTMENT OF THE INTERIOR

COAL MINES ADMINISTRATION

Washington 25, D. C.

MEMORANDUM:

To: The Operating Manager for the United States.

Subj.: Order No. CMAN 11; A and B; Workmen's Compensation and Occupational Disease Laws.

Enclosed herewith are copies of Order No. CMAN 11, A and B, of the Coal Mines Administration issued in pursuance of Section 3 of the Krug-Lewis Agreement dated May 29, 1946, relative to coverage under applicable Workmen's Compensation and Occupational Disease Laws.

Section 3 of the Krug-Lewis Agreement provides as follows:

"The Coal Mines Administrator undertakes to direct each operating manager to provide its employees with the protection and coverage of the benefits under Workmen's Compensation and Occupational Disease Laws, whether compulsory or elective, existing in the states in which the respective employees are employed. Refusal of any operating manager to carry out this direction shall be deemed a violation of his duties as operating manager. In the event of such refusal the Coal Mines Administrator will take appropriate action which may include disciplining or replacing the operating manager or shutting down the mine."

Upon analyzing the various Workmen's Compensation and Occupational Disease Laws of the states in which coal mines under possession and control of the United States are located, it was found that these laws, so far as pertinent with respect to the implementation of Section 3 of the Krug-Lewis Agreement is concerned, fall into three categories. These three categories are:

(a) Coverage under Workmen's Compensation and Occupational Disease Laws both elective.

(b) Coverage under Workmen's Compensation laws compulsory, but elective under Occupational Disease Laws.

(c) Coverage under Workmen's Compensation Laws elective; no Occupational Disease Laws in effect.

Accordingly, it was found necessary to prepare three distinct versions of the appropriate order carrying out Section 3 of the Krug-Lewis Agreement.

In view of the fact that many of the companies or operators own or operate mines located in states other than the state in which the central office of the operating company is located, or in several different states, each Operating Manager for the United States is being sent a copy of each of the above-mentioned orders. Each Operating Manager for the United States is directed to comply with the particular Order or Orders applicable to the mine or mines operated by his organization. He may, of course, disregard such of the above-

mentioned Order or Orders as do not apply to this organization because it operates no mine or mines in the particular states involved in such Order or Orders.

N. H. COLLISSON,
Captain, USNR, Deputy Coal Mines Administrator.

AUGUST 15, 1946.

UNITED STATES
DEPARTMENT OF THE INTERIOR
COAL MINES ADMINISTRATION

WASHINGTON 25, D. C., *Aug. 15, 1946,*

ORDER NO. CMAN 11

To: Operting Managers (Colorado, Georgia, Indiana, Missouri, Nebraska, New Mexico, North Carolina, Pennsylvania, West Virginia).

Subject: Workmen's Compensation and Occupational Disease Laws.

Reference is made to Section 3 of the Agreement dated May 29, 1946, between the Secretary of the Interior, acting as Coal Mines Administrator, and the United Mine Workers of America, which reads as follows:

"The Coal Mines Administrator undertakes to direct each operating manager to provide its employees with the protection and coverage of the benefits under Workmen's Compensation and Occupational Disease Laws, whether compulsory or elective, existing in the states in which the respective employees are employed. Refusal of any operating manager to carry out this direction shall be deemed a violation of his duties as operating manager. In the event of such refusal the Coal Mines Administrator will take appropriate action which may include disciplining or replacing the operating manager or shutting down the mine."

The office of Coal Mines Administrator is informed that the Workmen's Compensation and Occupational Disease Laws of the state in which the mine or mines of your company are located are of the elective type. In accordance with Section 3 of the Krug-Lewis Agreement quoted above, if your company has not already elected to do so, you are hereby directed as Operating Manager for the Government to provide the eligible employees of your company with the full protection and coverage of the benefits under the Workmen's Compensation and Occupational Disease Laws of the state in which the mine or mines of your company are located.

In order that the Coal Mines Administrator may be fully advised in the premises, you are further directed to furnish this office with the following information within ten days from the date of this letter:

1. Whether or not your company has heretofore elected to provide its eligible employees with the full benefits of the applicable Workmen's Compensation and Occupational Disease Laws of the state in which its mine or mines are located.

2. The extent of the coverage, if any, of the employees of your company at the present time under such Workmen's Compensation and Occupational Disease Laws.

Within thirty days from the date of this letter, if your company has not heretofore elected to provide its eligible employees with the full benefits of the applicable state Workmen's Compensation and Occupational Disease Laws, you are further directed to report as follows to this office:

1. Whether or not your company has provided its eligible employees with such benefits in accordance with this directive, and if so, the effective date of coverage.

2. If your company has not provided its eligible employees with such benefits, the reasons, if any, why such benefits have not been so provided in accordance herewith.

This order shall be deemed to be a specific direction or order within the meaning of the terms and provisions of the Revised Regulations For the Operation of Coal Mines Under Government Control (11 F. R. 7567).

N. H. COLLISSON,
Captain, USNR, Deputy Coal Mines Administrator.

UNITED STATES

DEPARTMENT OF THE INTERIOR

COAL MINES ADMINISTRATION

WASHINGTON 25, D. C., *Aug. 15, 1946.*

ORDER No. CMAN 11–A.
To: Operating Managers (Illinois, Kentucky, Virginia).
Subject: Workmen's Compensation and Occupational Disease Laws.

Reference is made to Section 3 of the Agreement dated May 29, 1946, between the Secretary of the Interior, acting as Coal Mines Administrator, and the United Mine Workers of America, which reads as follows:

"The Coal Mines Administrator undertakes to direct each operating manager to provide its employees with the protection and coverage of the benefits under "Workmen's Compensation and Occupational Disease Laws, whether compulsory or elective, existing in the states in which the respective employees are employed. Refusal of any operating manager to carry out this direction shall be deemed a violation of his duties as operating manager. In the event of such refusal the Coal Mines Administrator will take appropriate action which may include disciplining or replacing the operating manager or shutting down the mine."

The office of the Coal Mines Administrator is informed that coverage under the Workmen's Compensation Laws of the state in which the mine or mines of your company are located is compulsory, but that the Occupational Disease Laws of such state are of the elective type. In accordance with Section 3 of the Krug-Lewis Agreement quoted above,

if your company has not already elected to do so, you are hereby directed as Operating Manager for the Government to provide the eligible employees of your company with the full protection and coverage of the benefits under the Occupational Disease Laws of the state in which the mine or mines of your company are located.

In order that the Coal Mines Administrator may be fully advised in the premises, you are further directed to furnish this office with the following information within ten days from the date of this letter:

1. Whether or not your company has heretofore elected to provide its eligible employees with the full benefits of the applicable Occupational Disease Laws of the state in which its mine or mines are located.

2. The extent of the coverage, if any, of the employees of your company at the present time under such Occupational Disease Laws.

Within thirty days from the date of this letter, if your company has not heretofore elected to provide its eligible employees with the full benefits of the applicable state Workmen's Compensation and Occupational Disease Laws, you are further directed to report as follows to this office:

1. Whether or not your company has provided its eligible employees with such benefits in accordance with this directive, and if so, the effective date of coverage.

2. If your company has not provided its eligible employees with such benefits, the reasons, if any, why such benefits have not been so provided in accordance herewith.

This order shall be deemed to be a specific direction or order within the meaning of the terms and provisions of the Revised Regulations For the Operation of Coal Mines Under Government Control (11 F. R. 7567).

N. H. COLLISSON,
Captain, USNR, Deputy Coal Mines Administrator.

UNITED STATES
DEPARTMENT OF THE INTERIOR
COAL MINES ADMINISTRATION

WASHINGTON 25, D. C., *Aug. 15, 1946.*

ORDER NO. CMAN 11–B
To: Operating Managers (Alabama, Kansas, Tennessee, Texas).
Subject: Workmen's Compensation and Occupational Disease Laws.

Reference is made to Section 3 of the Agreement dated May 29, 1946, between the Secretary of the Interior, acting as Coal Mines Administrator, and the United Mine Workers of America, which reads as follows:

"The Coal Mines Administrator undertakes to direct each operating manager to provide its employees with the protection and coverage of the benefits under Workmen's Compensation and Occupational Disease Laws, whether compulsory or elective, existing in the states in which the respective employees are employed. Refusal of any oper-

ating manager to carry out this direction shall be deemed a violation of his duties as operating manager, In the event of such refusal the Coal Mines Administrator will take appropriate action which may include disciplining or replacing the operating manager or shutting down the mine."

The office of the Coal Mines Administrator is informed that the Workmen's Compensation Laws of the state in which the mine or mines of your company are located are of the elective type and that no state law provisions relating to coverage for occupational disease or silicosis are presently in effect. In accordance with Section 3 of the Krug-Lewis Agreement quoted above, if your company has not already elected to do so, you are hereby directed as Operating Manager for the Government to provide the eligible employees of your company with the full protection and coverage of the benefits under the Workmen's Compensation Laws of the state in which the mine or mines of your company are located.

In order that the Coal Mines Administrator may be fully advised in the premises, you are further directed to furnish this office with the following information within ten days from the date of this letter:

1. Whether or not your company has heretofore elected to provide its eligible employees with the full benefits of the applicable Workmen's Compensation Laws of the state in which its mine or mines are located.
2. The extent of the coverage, if any, of the employees of your company at the present time under such Workmen's Compensation Laws.

Within thirty days from the date of this letter, if your company has not heretofore elected to provide its eligible employees with the full benefits of the applicable state Workmen's Compensation and Occupational Disease Laws, you are further directed to report as follows to this office:

1. Whether or not your company has provided its eligible employees with such benefits in accordance with this directive, and if so, the effective date of coverage.
2. If your company has not provided its eligible employees with such benefits, the reasons, if any, why such benefits have not been so provided in accordance herewith.

This order shall be deemed to be a specific direction or order within the meaning of the terms and provisions of the Revised Regulations For the Operating of Coal Mines Under Government Control (11 F. R. 7567).

N. H. COLLISSON,
Captain, USNR, Deputy Coal Mines Administrator.

Government's Exhibit 30

UNITED STATES
DEPARTMENT OF THE INTERIOR
COAL MINES ADMINISTRATION
Washington 25, D. C.

ORDER No. CMAN–5

Enclosed herewith and made a part hereof is a memorandum of Agreement dated June 27, 1946, between the Coal Mines Administrator and the United Mine Workers of America providing for an interim operating program for the collection and custodianship of monies payable pursuant to Section 4 (a) of the Agreement between the Coal Mines Administrator and the United Mine Workers of America dated 29 May 1946.

All Operating Managers are hereby advised that the obligation to make payments to the Welfare and Retirement Fund became effective with reference to coal produced for use or for sale on and after June 1, 1946, and that the payment for the period from June 1, 1946, to July 15, 1946, is to be made on August 15, 1946. Prior to August 15, 1946, all Operating Managers will be advised of the manner in which the payment is to be made and the address to which it shall be directed.

BEN MOREELL,
Admiral (CEC) USN,
Coal Mines Administrator.

1 JULY 1946.

Government's Exhibit 31

UNITED STATES
DEPARTMENT OF THE INTERIOR
COAL MINES ADMINISTRATION
Washington 28, D. C.

ORDER No. CMAN–8

Subject: United Mine Workers of America Welfare and Retirement Fund, procedure for making payment and reporting amount due.

1. Paragraph 4 of the Krug-Lewis Agreement, dated 29 May 1946, deals with the health and welfare program. Paragraph 4 (a) concerns *A Welfare and Retirement Fund*, and states, "a welfare and retirement fund is hereby created, and there shall be paid into said fund by the operating managers 5¢ per ton on each ton of coal produced for use or for sale." This order is in reference only to paragraph 4 (a), and the instructions contained herein are not applicable to paragraph 4 (b), which sets up a medical and hospital fund.

2. For the purpose of the Welfare and Retirement Fund, a ton of coal consists of 2,000 pounds net. Railroad weights at the mines shall be used to determine coal produced for use or for sale whenever such weights are available. Where no railroad weights at the mine are

available other transportation or shipping weights determined at the mine shall be used. Where railroad or other shipping or transportation weights are not available, the most accurate and available weights or measures of usable or salable coal produced shall be used.

3. By Memorandum of Agreement, dated 27 June 1946 (Order No. CMAN–5) the Coal Mines Administrator and the President, UMWA, designated Rear Admiral W. J. Carter, SC, USN, Chief of the Bureau of Supplies and Accounts and Paymaster General of the Navy, as Custodian of this fund pending the appointment of trustees as required by the Krug-Lewis Agreement. No expenditure will be made from the fund, which will be kept intact until accounting therefor is made to the trustees.

4. The name of the fund is "United Mine Workers of America Welfare and Retirement Fund."

5. The Custodian has made arrangements with the First National Bank of the City of New York, New York City, to act as the depository of the fund during the period of his custodianship.

6. Checks in payment of obligations to the United Mine Workers of America Welfare and Retirement Fund will be made to the order of the "United Mine Workers of America Welfare and Retirement Fund" and mailed directly to the First National Bank of the City of New York, New York City. The checks will be forwarded with a check letter of advice, the original of which will accompany the check to the bank. A copy of the check letter of advice will be mailed by the operator to:

The Custodian,
United Mine Workers of America,
Welfare and Retirement Fund,
Room I–2032, Bureau of Supplies and Accounts,
Navy Department,
Washington 25, D. C.

7. In the near future there will be forwarded to each coal operator sufficient sets of check letters of advice to last about one year. They will have carbons inserted and each copy will be addressed specifically to the recipient. Pending receipt of the check letters with carbon inserts coal operators will be furnished with an ample supply of loose check letter forms. They should be mailed promptly and directly to the addressee appearing on each form.

8. For the purpose of an accurate record it will be necessary that the Custodian have information on the "coal produced for use and for sale" from each mine operated by an operating agency. Space has been provided to insert this information in the check letter of advice. If additional space is required, the data should be shown on the reverse side of the form or on a separate schedule securely attached to the form. Until further instructions are issued, this will be the only report required of the coal operators in connection with the establishment of the United Mine Workers of America Welfare and Retirement Fund. It is important, therefore, that care be used in the preparation of these check letters of advice.

9. If an operator does not mine coal for a given period and therefore has not accrued any obligation under the United Mine Workers of America Welfare and Retirement Fund, notification should be for-

warded by using the check letter of advice stating these facts. In this case the operator shall forward all copies to the Custodian at the address shown in paragraph 6.

10. Direct all communications having to do directly with matters pertaining to the fund to the Custodian at the address given in paragraph 6 above, but any matters having to do with interpretation of the Krug-Lewis Agreement or existing contracts should be referred directly to the Coal Mines Administrator, Department of the Interior, Washington 25, D. C.

11. This order shall be deemed to be a specific direction or order within the meaning of the terms and provisions of the Revised Regulations For the Operation of Coal Mines Under Government Control (11 F. R. 7567).

N. H. COLLISSON,
Capt., USNR, Deputy, Coal Mines Administrator.

JULY 29, 1946.

NOTE.—The exhibit in evidence immediately following Government's Exhibit 31 is Government's Exhibit 36.

NOTE.—Government's Exhibits 36 and 37 are lengthy documents parts only of which were offered and admitted in evidence; those parts are fully stated in and as Government's Exhibit 38–A, and Government's Exhibits 36 and 37 are accordingly not printed.

Government's Exhibit 38

In the United States Courts of Appeals for the District of Columbia

No. 9342

JONES & LAUGHLIN STEEL CORPORATION, APPELLANT

vs.

UNITED MINE WORKERS OF AMERICA, ET AL., APPELLEES

Appeals of the defendants, United Mine Workers of America, an unincorporated association, and John L. Lewis, as a representative member thereof

It appearing that J. A. Krug, Secretary of the Interior, as Coal Mines Administrator, and his deputy, appellees herein, have already filed in this cause their brief on appeal, and it further appearing therefrom that the points made in said brief and authorities cited therein are in substance and to all intents and purposes the Points and Authorities upon which these two appellees will rely upon the argument of this appeal; and it further appearing that an additional brief now filed on behalf of the United Mine Workers of America and John L. Lewis, appellees as hereinbefore stated, would be but a repetitious and duplicating burden upon the files of this Court, with no substan-

tially new matter to be set up in said brief, with the permission of the other appellees already obtained, the United Mine Workers of America, an unincorporated Association, and John L. Lewis, as a representative member thereof, announce that they will rely upon the said brief already filed, as aforesaid, as and for and in lieu of any additional brief otherwise to be filed by them.

/s/ William E. Leahy,
WILLIAM E. LEAHY,
/s/ Welly K. Hopkins,
WELLY K. HOPKINS,
/s/ Harrison Combs,
HARRISON COMBS,
/s/ Samuel Krimsky,
SAMUEL KRIMSKY,
Attorneys for Appellees.

Government Exhibit 38–A

JFS:JFH
146–49–166.

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DECEMBER 2, 1946.

Re: United States of America v. United Mine Workers of America, et al. Civil No. 37764. In the United States District Court for the District of Columbia

WELLY K. HOPKINS, Esquire,
United Mine Workers Building
15th & I Streets NW., Washington, D. C.

MY DEAR MR. HOPKINS: In accordance with the court's direction, I send you herewith a copy of the brief and appendix of government appellees and the appendix to appellant's petition and brief in the case of Jones & Laughlin Steel Corporation v. United Mine Workers of America, et al., in the United States Court of Appeals for the District of Columbia, Number 9342. The parts of the brief which were read into the record today are between the red pencil brackets on pages 5, 14, and 22 to 23. The additional portions of that brief which I propose to offer are within the double red brackets on pages 23 to 25, 28 to 29, and 32.

The portions of the appendix to appellant's petition and brief were from the answer of the United Mine Workers and John L. Lewis as a representative thereof, namely, paragraphs 1, 2, 6, and part of 8 within the red pencil brackets at pages 131a to 133a.

Sincerely yours,
For the Attorney General,

JOHN F. SONNETT,
Assistant Attorney General.

Enclosure No. 485172.

The portions of the brief of appellees in the Jones & Laughlin Steel Corporation case which were referred to by Mr. Sonnett in the above letter read as follows:

(Page 5)

6. On May 29, 1946, after negotiations with the appellee Union, an agreement (the "Krug-Lewis agreement") was entered into between the Secretary of the Interior and the appellee Union, establishing, subject to the approval of the National Wage Stabilization Board and the President of the United States, the terms and conditions of employment at the mines for the period of the Government's possession (App. 42a–50a).

* * * * *

(Page 14)

To read the War Labor Disputes Act and the executive order—as appellant apparently suggests we must (Br. 37–38)—so as to withhold from the Government agency made responsible for the operation of Government-possessed plants, the power to eradicate the roots of the labor disturbances which compelled Government seizure, would be to frustrate the Congressional purpose and to impute to the Congress and to the President an incredible myopia as to the realities of wartime labor relations. Experiences prior to the enactment of the War Labor Disputes Act had made it quite clear that Government seizure, in itself, could hardly accomplish a resumption of production in industrial plants torn by labor strife.

* * * * *

(Pages 22–25)

C. The Regulations for the Operation of Coal Mines under Government Control do not preclude the execution and effectuation of the agreement with the UCT.

Appellant argues also that the Regulations for the Operation of Coal Mines under Government Control issued by the Coal Mines Administrator, forbid the execution and effectuation of the agreement with the UCT.[10] An understanding of the character and design of the Regulations will readily dispel any such notion.

The Regulations were formulated in an effort to assure the minimum of Government intervention in the operation of the coal properties consistent with the primary object of Government possession, that is, the maintenance of full, uninterrupted coal production. This purpose was in accord with the Presidential dictate in his executive order that (App. 17a):

"The Secretary of the Interior shall permit the managements of the mines taken * * * to continue with their managerial functions to the maximum degree possible consistent with the aims of this order."

The Regulations contemplate that the mining companies, appreciating the necessity for Government intervention, will cooperate with the Secretary of the Interior in the operations of the mines. It is made clear, however, that acceptance of the cooperative arrangement by the owners does not, in any sense free them from compliance with directions issued by the Secretary and the Coal Mines Administrator. And provision is made for terminating the arrangement should any operator refuse to comply with such directions.

[10] The Regulations in effect at the time the complaint was filed in the District Court were those which had theretofore been issued by Secretary Ickes, as amended (8 F. R. 9655, 10712, 11344, 17339). Since then, the Coal Mines Administrator has issued a revised set of regulations (11 F. R. 7567); these are printed at App. 1b–31b. As appellant states (Br. 5, n. 7), there is no material difference between the original and revised drafts so far as this suit is concerned.

Thus, although it is provided that "All properties in the possession of the Government shall be operated in a manner consistent with the fact that title to the properties remains in the owners thereof and that the Government, having temporarily taken possession or custody, will assert only such rights as are necessary to accomplish the national purpose of continued and maximum production" (App. 3b) and that "Wherever the cooperation of the company and its personnel can be secured, the existing organization of the mining company will be utilized, and the company will continue operation in the regular course of business as a going enterprise" (App. 3a–3b); it is clearly stipulated that the companies must conform "with such directions as the Government may issue" (App. 3b). Furthermore, all officers and employees of the company are directed to "serve in full recognition of * * * [their responsibilities to the Government] and subject to all orders and regulations of the [Coal Mines] Administrator" (App. 6b). And where cooperation of the company cannot be secured, provision is made for supplanting private management with Government management (App. 3b, 6b, 7b, 23b–24b).

Moreover, although the Regulations provide that operations during Government possession are generally not to be regarded as for the Government's account, obligations may be incurred on behalf of the Government upon "a specific written direction or order to that effect * * * given by the Administrator" (App. 8b). Again, although confirmation of the companies' financial responsibility for the operations is invited, so that the burdens of an accounting may be avoided (App. 12b–14b, 26b–27b); there are available to the companies procedures under which they may reserve their rights to assert against the Government, claims for damages allegedly resulting from specific Government directions or orders (App. 14b–19b, 27b–28b). And, more than this, by failing to file any of the instruments adopting the operation during the period of Government possession or any part thereof as their own, companies may, under the Regulations, reserve "the right to claim that all operations * * * are for the account of the Government * * *" (App. 19b–20b, 28b–29b). Furthermore, as has already been noted, any company—including appellant—may at any time elect to withdraw from participation in the program established by the Regulations and thus to stand on whatever rights it may have to fair and just compensation under the Fifth Amendment and the Selective Training and Service Act of 1940.[11]

It is noteworthy that the Regulations contain express provisions contemplating changes in working conditions at the mines. Thus, it is provided (App. 10b) that the "terms and conditions of employment which were in effect at the time possession of the mines was taken * * * may be changed by order or direction of the Administrator, subject to the provisions of Section 5 of the War Labor Disputes Act, where appropriate." And, further, it is required (App. 10b–11b) that "the right of the workers shall be recognized to continue their membership in any labor organization, to bargain collectively through representatives of their own choosing, and to engage in col-

[11] Section 3 of the War Labor Disputes Act (App. 34b–35b) is an amendment to Section 9 of the Selective Training and Service Act (App. 32b–34b), which reads, in part, as follows:
"The compensation to be paid to any individual, firm, company, association, corporation, or organized manufacturing industry * * * as rental for use of any manufacturing plant while used by the United States, shall be fair and just * * *

lective activities for the purpose of collective bargaining or other mutual aid or protection, provided that such concerted activities do not interfere with the operation of the mine." Having consented to operation of its mines in accordance with the Regulations and having accepted the benefits derived from such operation, appellant can hardly refuse—at least until it has terminated the relationship with the Government which the Regulations contemplate—to perform the duties, however onerous, imposed by the Regulations.

In short, the Secretary of the Interior, acting for the United States, although he has taken possession of appellant's mines, has chosen to control their operation only to that limited extent which he has deemed necessary to assure a maximum production of coal there. Cf. Marion & Rye Valley Ry. Co. v. United States, 270 U. S. 280. Appellant has thus far accepted his invitation to participate in the operation of the mines in accordance with the plan of the Regulations. The authority of the Secretary is, however, much broader than his present exercise of authority; this is not only implicit in the fact of Government possession, but explicit in the War Labor Disputes Act, in Executive Order 9728, and in the provisions of the Regulations themselves. Cf. Dakota Central Telephone Co. v. South Dakota, 250 U. S. 163, 184.

The operations of the mines remain at all times subject to the Secretary's direction. Consequently, the Coal Mines Administrator was acting well within his authority when, in accordance with Section 5 of the War Labor Disputes Act, he ordered changes in the terms and conditions of employment at appellant's mines. Appellant has protested that order (supra, p. 6). Should it refuse to comply with it, the Secretary could, if he desired, terminate the present arrangement with appellant and supplant its management with his own. On the other hand, appellant may also, at any time, withdraw from the present arrangement and refuse further to conduct the operations at the mines for its own account. There is nothing in the Regulations which renders the present arrangement immutable. Nor is there anything in the Regulations which divests the Secretary and the Coal Mines Administrator of any portion of their authority, as officers of the United States, to manage the mines as they see fit, conformable with the Presidential order and the pertinent acts of Congress.

(Pages 28–2v):

* * * * *

First, since appellant's mines are now in the Government's possession, this suit, brought against officials of the United States in their official capacity, to enjoin them from performing acts relating to employment practices in those mines, is, in substance, a suit against the United States. Wells v. Roper, 246 U. S. 335; Louisiana v. McAdoo, 234 U. S. 627; Minnesota v. Hitchcock, 185 U. S. 373; Transcontinental & Western Air v. Farley, 71 F. (2d) 288 (C. C. A. 2), cert. den. 293 U. S. 603. Absent Congressional consent to such a suit, the action will not lie. Ibid.

Second, the action invites judicial intercession whose effect may well be to slow down the work of the mines and to impede the conversion of the nation's economy from a war- to a peace-time basis. The courts, reluctant to control the executive discretion in normal times and as to ordinary functions (Adams v. Nagle, 303 U. S. 532, 540;

United States ex rel. Greathouse v. Dern, 289 U. S. 352, 360; United States v. Interstate Commerce Commission, 294 U. S. 50), certainly will not be moved to control executive discretion under the circumstances of this case. Ken-Rad Tube and Lamp Corp. v. Badeau, 55 F. Supp. 193, 197 (W. D. Ky.); Jenkins v. National War Labor Board, D. C., Civil Action No. 23711.

* * * * *

(Page 32)

* * * * *

On the other hand, the Secretary of the Interior and the Coal Mines Administrator, if enjoined from putting the agreement into effect, would be prohibited from carrying out an obligation which they assumed (in paragraph 11 of the Krug-Lewis agreement) in a successful effort to procure a resumption of the nation's coal production which had broken down because of labor disturbances in the coal fields and, thus, to avert a calamity in the nation's economic life.

The following are excerpts from the Answer of the United Mine Workers and John L. Lewis as representative thereof in the Jones & Laughlin Steel Corporation case which were referred to by Mr. Sonnett in the above letter:

In the District Court of the United States for the District of Columbia

Civil Action #35,308

JONES & LAUGHLIN STEEL CORPORATION, PLAINTIFF *vs.* UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, AS A REPRESENTATIVE MEMBER THEREOF; ET AL, DEFENDANTS.

Answer of the defendants, United Mine Workers of America, an unincorporated association, and John L. Lewis, as a representative thereof, to motion for preliminary injunction

Come now the defendants, United Mine Workers of America, an unincorporated Association, and John L. Lewis, as a representative thereof, and for Answer to the Motion for a Preliminary Injunction filed against them by the plaintiff herein say:

1. This Court is without jurisdiction to grant said Preliminary Injunction as prayed.

2. The Complaint of the plaintiff herein is in legal effect and substance a suit against the United States, to the filing of which there exists no Congressional authorization, consent or permission; any Preliminary Injunction, therefore, as moved by this plaintiff, would be one directed against the United States, acting through its duly authorized officers and agents.

* * * * *

6. This Court will not enjoin the defendants Krug and Morell, even temporarily, because neither has done or threatened to do any act to invade any right of this plaintiff. Being in lawful possession of the mines and operating them under the lawful order of the Presi-

Government's Exhibit 39

The New York Times, Saturday, November 16, 1946, page two, in part, reading as follows:

Truman, Krug, Lewis and Clark Texts on Coal Situation

WASHINGTON, Nov. 15 (AP)—The texts of President Truman's statement on the coal situation, Secretary Krug's letter to John L. Lewis, the mine union leader's reply, Mr. Krug's rejoinder and Attorney General Clark's letter to Mr. Krug giving his opinion on reopening the contract are as follows:

President Truman

Secretary of the Interior Krug delivered to the president of the United Mine Workers, yesterday afternoon, a written proposal containing the details of a plan under which the operators and miners could negotiate their differences and the mines would remain in operation.

I am thoroughly familiar with this proposal and I consider it eminently fair to both mine workers and operators. A copy of the proposal is attached hereto.

In my statement of Nov. 9 directing immediate abandonement of all control over wages and salaries, and virtually all controls over prices, I stated "today's action places squarely upon management and labor the responsibility for working out agreements for the adjustment of their differences without interruption of production."

The abandonment of wage and price controls requires the immediate resumption of normal collective bargaining between management and labor without Government substitution for either party. Bituminous coal mining is the only important segment of private industry in which the Government, under its emergency responsibilities, now replaces party to normal collective bargaining.

Negotiated by Government

The Coal Mines Administration of the Department of the Interior is party to a contract with the United Mine Workers of America governing employment conditions in that industry. This contract was negotiated by the Government and the union last spring after a complete breakdown in collective bargaining between the coal operators and the union.

Mines were idle more than fifty

ble to the mine workers' negotiating committee.

The Government proposal is fair and equitable. It considers the rights of the miners, the operators and the public, and carefully protects the rights of each.

In view of this it is my hope that a serious reconsideration of the entire situation will convince the United Mine Workers that the adoption of this proposal is for the best interests of all concerned.

Acceptance of the proposal by the mine workers will satisfy the desire of 140,000,000 Americans for industrial peace and continued production in the soft-coal mines, and in all our great industries, which are so dependent upon coal.

Secretary Krug

My dear Mr. Lewis:

In our meeting of Nov. 11 you presented certain proposals for modification of the present contract under which the members of the United Mine Workers are working for the period of Government possession. This was the first time since the conference began on Nov. 1 that any specific proposals for modification of the existing contract have been advanced by the United Mine Workers.

I am obliged to inform you that certain of your proposals are of such a fundamental nature that they should be directed to the owners and private operators of the bituminous coal mines rather than to the Government, which is only the interim custodian of these properties.

The Government took over the bituminous mines last May only after it became clearly evident that this was the only available means of averting an economic disaster to the country. Since that time the Government has made diligent efforts to return the mines to private operation with an assurance of continued production.

The United Mine Workers have formally and publicly expressed themselves in favor of an early return of the mines to private operation. The operators have stated that they, too, are anxious to regain control of their properties.

I am convinced that any subtive bargaining, if no agreement should be reached during this first month, the price limitations would be removed and any changes thereafter agreed upon as to wages and hours would be made retroactive to Dec. 16, 1946.

If no agreement should be reached by Jan. 16, 1947, the mines would be returned to private possession on that date and the normal operation of economic forces would then prevail in the coal industry.

The operators have agreed to accept this arrangement. I urge that you, too, accept this arrangement and meet with the representatives of the operators on Nov. 16 or at the earliest convenient date, in a sincere effort to reach an agreement which will restore the mines to private operation.

The Coal Mines Administration, as you know, has consistently taken the position that the Krug-Lewis agreement, except as it may be modified by mutual consent or by petition under Section 5 of the War Labor Disputes Act, covers the period of Government possession. I have been informally advised by the Attorney General of the United States that this interpretation of the contract is correct.

I expect, whatever decision you should reach with respect to negotiating with the operators, that the United Mine Workers will honor our present contract and make every effort to insure that the nation obtains the coal production which it so desperately needs.

Sincerely,
J. A. KRUG,
Secretary of the Interior.

John L. Lewis

Dear Mr. Secretary:

Your communication of Nov. 14, 1946, has been received and carefully considered. The United Mine Workers of America now make reply.

On Sept. 23, 1946, while in informal and private conference with you, we asked that the coal mines administrator voluntarily modify and adjust the miners' working hours. Your attention was again (as it had heretofore been) directed to the brutal fifty-four-hour underground schedule of the men laboring in the bowels of the earth.

On Sept. 18, under the auspices of Admiral Moreell, in joint conference with us, the operators in writing revealed their divided household and, as epitomized by former Senator Burke, haughtily, arbitrarily and with blunt malice rejected the fundamental issues as presented to them by Admiral Moreell.

You now, at the last hour, of the last day, yield to the blandishments and soothing siren voice of the operators and seek to place the United Mine Workers of America and its members between Scylla and Charybdis. This course we refuse to follow.

The Government of the United States seized the mines and entered into a contract. The mine workers do not propose to deal with parties who have no status under that contract.

We do not propose to be driven like dumb beasts to the slaughter of slow strangulation envisioned by your proposal and the operators' well known and long used tactics of evasion and delay. We call upon you to honor your contract.

This, therefore, Mr. Secretary, constitutes our reply in the negative to your proposal.

Yours truly,
Negotiating Committee, United Mine Workers of America,
By: John L. Lewis, Pres.

Second Krug Letter

Dear Mr. Lewis:

I have received your two letters of Nov. 15, one of which undertakes formally to give me notice that the Government contract with the United Mine Workers will be terminated by you at midnight on Nov. 20, and the other of which amplifies your reasons for giving this notice.

I must advise you that you have no power under the Krug-Lewis agreement of May 29 or under the law, by unilateral declaration, to terminate the contract which by its terms "covers for the period of Government possession the terms and conditions of employment."

I have since my letter to you of Nov. 14 received from the Atminers' conference to supersede the conference now in existence since Nov. 1 is sheer folly and empty platitude, well known to you so to be.

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I have since my letter to you of Nov. 14 received from the At-

covers for the period of Government possession the terms and conditions of employment in respect to all mines in Government possession * * * " It goes on to provide in Paragraph 1 that, "except as amended and supplemented herein, this agreement carries forward and preserves the terms and conditions contained in all joint-wage agreements effective April 1, 1941, through March 31, 1943 * * * and the national bituminous coal-wage agreement, dated April 11, 1945."

Provision Is Noted

The agreement of April 11, 1945, just referred to, contains the following provision, which forms the second paragraph of Section 15:

"At any time after March 1, 1946, either party may give ten days' notice in writing of a desire for a negotiating conference upon the matters outlined in said notice. The other party agrees to attend said conference. At the end of fifteen days after the beginning of such negotiating conference either party may give to the other a notice in writing of the termination of this agreement, to be effective five days after the receipt of such notice."

In my opinion the provision which I have just quoted is no longer in force. The agreement of May 29, 1946, expressly provides that it "covers for the period of Government possession the terms and conditions of employment."

It thereby specifies the period during which it is to remain in force and, accordingly, "amends and supplements" Section 15 of the 1945 agreement, which provided an opportunity for renegotiation and termination of the terms and conditions of that contract at any time either party desired after March 1, 1946.

This conclusion is reinforced by an examination of the provisions of the War Labor Disputes Act (57 Stat. 163), under which possession of the mines was taken by the United States. (See executive order No. 9728, dated May 21, 1946.) The provisions of that act contemplate, first, that the operations of plants and mines in Government possession shall continue without interruption, and, second, that there shall be an equitable approach to the problem of fixing terms and conditions of employment in such

America governing employment conditions in that industry. This contract was negotiated by the Government and the union last spring after a complete breakdown in collective bargaining between the coal operators and the union.

Mines were idle more than fifty days and the stock of bituminous coal above ground was rapidly being depleted. Shutdowns in industries dependent on coal spread rapidly and thousands of workers in these industries were laid off.

The nation has not recovered from the long and costly coal strike of last spring. In the intervening five months railroads, public utilities, steel mills and other industries have not been able to purchase and store sufficient coal to carry them for any substantial period. Nor have thousands of household consumers been able to purchase enough fuel to carry them through the winter months.

In the face of these circumstances, on Nov. 1, the United Mine Workers of America requested the coal mines administrator to reopen the May 29 contract. Secretary Krug informs me that he has discussed with representatives of mine workers their subsequent demands for changes in the employment conditions in their contract.

I wish to make it clear that the Government takes no position as to the merit or demerit of these demands, but under this present proposal, such questions are referred to the operators and the miners for settlement by the process of free collective bargaining.

I am advised by the Attorney General that the existing contract is clearly applicable for the full period of Government operation. He further informs me that it makes no provision for reopening, without mutual consent, to discuss new wages, hours or other employment terms. It was intended to be replaced by a direct employer-union contract.

The Government cannot replace private management as the bargaining agent without interfering with true collective bargaining between management and labor. This principle has been frequently and vigorously endorsed by leading representatives of management and labor groups, including the representatives of mine owners and both the president and the Convention of the United Mine Workers.

The proposal made by Secretary Krug has been accepted by the bituminous coal-mine operators' negotiating committee.

This morning, however, the president of the United Mine Workers notified Secretary Krug that the proposal was not acceptable.

The United Mine Workers have formally and publicly expressed themselves in favor of an early return of the mines to private operation. The operators have stated that they, too, are anxious to regain control of their properties.

I am convinced that any substantial change in wage rates and hours of employment made by the Government at this time would postpone for an indefinite period the return of the mines to their owners and would thwart the expressed and sincere wishes of all persons concerned for genuine collective bargaining between management and labor in the bituminous coal industry.

U. S. Acts for Normal Control

The Government is bending every effort to restore the national economy to its normal peacetime operation. To this end, the President has just announced the removal of virtually all wage and price controls.

It would contradict this policy, and be inimical to the best interest of the coal miners and of the country, should the Government prolong indefinitely its temporary role as a substitute for one of the parties in the collective bargaining which must be the foundation of a healthy coal industry.

I express no views whatever upon the intrinsic merits of any of your proposals, but must advise you that they are of such a nature that the Government should not make them a part of its existing contract with the mine workers.

I have frequently urged that you meet with representatives of the coal operators in order to negotiate, through the normal processes of collective bargaining, a new contract for the coal industry. I outlined to you yesterday an arrangement by which these negotiations might proceed under conditions which would be fair to both parties.

Under this arrangement I would convene a conference between United Mine Workers and the bituminous coal operators negotiating committee on Nov. 18, or the soonest practicable date thereafter.

In order that coal production might be maintained during these negotiations, Government operation of the mines under the Krug-Lewis agreement would be continued for a maximum period of two months. During the first of these months the situation would be held in status quo, without retroactive wage changes and with a prohibition against increasing the price of coal sold from a mine in Government possession except upon the prior approval of the coal mines administrator.

To hasten the process of collective [illegible] with you, we asked that the coal mines administrator voluntarily modify and adjust the miners' working hours. Your attention was again (as it had heretofore been) directed to the brutal fifty-four-hour underground schedule of the men laboring in the bowels of the earth.

This was prior to the United Mine Workers' national convention and prior to the recent national election. Since that date until receipt of your ukase of yesterday, you have remained silent and have deigned no reply to the 400,000 men who now serve the Government of the United States in the bituminous coal mines.

The mine workers on Oct. 21, 1946, exercising their contractual right, gave the requisite ten-day notice and respectfully requested a conference with you on Nov. 1. You, while touring the West, contemptuously replied that you would be in Tule Lake, California, and might find time to discuss the matter at that time and place, if the miners would journey westward to meet you there.

Changing your mind, you finally designated your representatives to attend the conference, while you continued your tour until after Tuesday, Nov. 5. You finally appeared on Monday, Nov. 11. Since that date, you have graciously given of your time, in full and private conference to the extent of three hours and fifty-eight minutes.

Time of Proposal Cited

You were aware of the formal notice of Oct. 21 of the operation of the ten, fifteen and five-day provisions of the contract. On yesterday, Nov. 14, twenty-five days after formal notice, you made your proposal.

Your statements to the contrary notwithstanding, the mine workers constantly from Nov. 1 to and including Nov. 11 made concrete proposals to you on the matter set out in the notice of Oct. 21. You, cavalierly, now propose a sixty-day freeze of the existing conditions on terms which you have first negotiated with the operators, who are strangers to the Krug-Lewis agreement.

You arbitrarily assert the right to designate that sixty-day period to begin on Nov. 18 and prescribe the method of conducting a conference between the mine workers and operators during that period. You, likewise, assert that the Krug-Lewis agreement can be "modified by mutual consent."

Then, sir, where do you find a legal or moral right to deny to the mine workers their plain contractual right to reopen the contract, as we respectfully requested on Oct. 21?

Your proposal for this operator-[illegible] agreement of May 29 or under the law, by unilateral declaration, to terminate the contract which by its terms "covers for the period of Government possession the terms and conditions of employment."

I have since my letter to you of Nov. 14 received from the Attorney General of the United States a formal opinion which rules that you are without power to terminate this contract with the Government.

In view of the important national considerations mentioned by the President in his statement today and in view of the official ruling of the Attorney General as to the obligations of the United Mine Workers under their contract, I again urge you to reconsider the position indicated in your letter of today and to enter into conferences with the bituminous coal operators' negotiating committee without loss of the coal production which is so critically needed at this time.

Attorney General Clark

My dear Dr. Secretary.

Under date of Oct. 31, 1946, I sent you an informal letter of advice relative to further negotiations under the agreement which you executed on May 29, 1946, with the representatives of the United Mine Workers of America. My letter concluded by saying:

"This is to advise you that in my opinion there is no legal obstacle to such further negotiations nor is there any legal impediment to modification of the existing contract so as to reflect changes in wages and other terms and conditions of employment, provided such modification, if any, is satisfactory both to the Government and to the United Mine Workers of America.

This is true whether or not Section 15 of the agreement of April 11, 1945, is deemed applicable in the present situation and accordingly I do not believe it necessary at this time to pass upon any question relative to that section. The negotiations can, of course, proceed without prejudice to the rights of either party."

By letter dated Nov. 4, 1946, you advised me that it was of importance to both parties "to know whether Section 15 of the 1945 contract does in fact apply" to the present conferences. You accordingly requested my views on that question and upon your return to the city I gave them to you informally. Today you have requested a formal confirmation, which I am now pleased to give you.

The agreement which you and the miners' union executed on May 29, 1946, opens with the recital that "this agreement, ***

tive order No. 9728, dated May 21, 1946.) The provisions of that act contemplate, first, that the operations of plants and mines in Government possession shall continue without interruption, and, second, that there shall be an equitable approach to the problem of fixing terms and conditions of employment in such plants and mines.

The contract here under discussion must be interpreted and applied in the light of these objectives. The War Labor Disputes Act sets forth in detail the method whereby changes in such terms and conditions of employment may be effected. It specifically provides, in Section 5, that after possession has been taken by the Government "the Government agency operating such plant, mine, or facility, or a majority of the employes of such plant, mine or facility, or a majority of the employes of such plant, mine or facility or their representatives, may apply to the National War Labor Board for a change in wages or other terms or conditions of employment in such plant, mine or facility."

Applies to Altered Conditions

This provision was designed to enable the National War Labor Board to take action from time to time to meet changing conditions. The successor to the National War Labor Board, for the purpose of making determinations under Section 5 of the act, is now the National Wage Stabilization Board (see Executive Order No. 9672, dated Dec. 31, 1945, 11 F. R. 221). That board on May 31, 1946, issued an order promulgating the terms and conditions of employment established by the agreement of May 29, 1946.

Nothing in the agreement of May 29 purports to limit or alter in any way the right and privilege of either party to the agreement under Section 5 of the act to seek from time to time any necessary or desirable change in terms and conditions of employment. It may be that the guarantee which Congress has given in Section 5 cannot be contracted away.

That is a question which I do not have to decide in the present case because I do not believe that you and the union representative intended to contract it away. The agreement you entered into cannot possibly be so interpreted, under its terms. It must follow, therefore, that even though Section 15 of the 1945 agreement is not applicable, the employes of the mines may at any time apply to the National Wage Stabilization Board to request changes in terms and conditions of employment.

If I can be of further assistance to you, please let me know.

dent, their policies, management, operation and control of the mines, during the time in which these defendants are in lawful possession thereof, will not be restrained or enjoined by this Court in the absence of a clear showing of fraud, oppression, or illegal conduct upon their part or that of either of them to the injury or destruction of the rights of this plaintiff.

* * * * * *

8. All acts done and policies formulated by these said defendants are authorized so to be done and formulated by the President, acting lawfully in that regard, and said acts are to be done and said policies formulated for existence and effect only during and through the duration of their possession of the mines on behalf of the United States; * * *

* * * * * *

Government's Exhibit 40

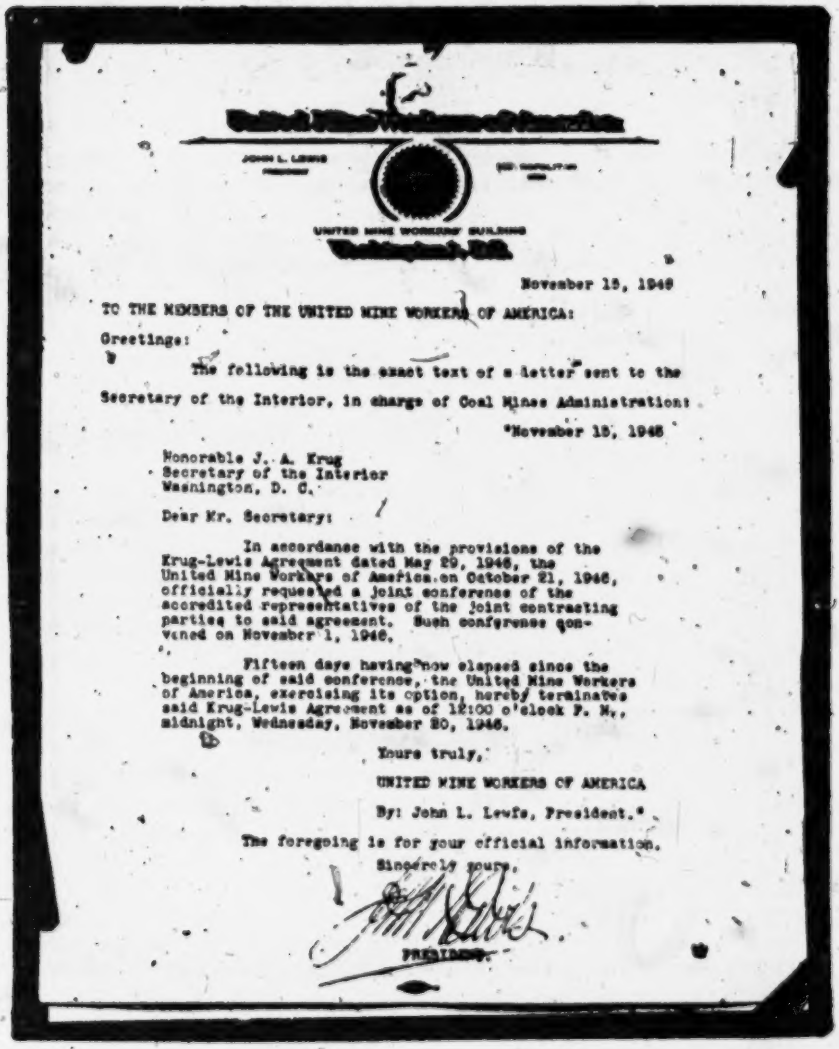
Page 10 of the United Mine Workers Journal for June 1, 1946, provides in part as follows:

> "The economic creed of the UMWA—'No contract, no work'—effectively employed, constitutes an educational institution. A 'dim-out' is a 'knock-out.' But the tuition in that school is pretty costly for both the miners and the public. Coal miners cannot afford to pay the toll at every period of contract expiration to reeducate the pavement peasantry of our big cities, a few small towners, and some ruralites who have always been too prone to let the miners fight their own battles alone."

Page 5 of the United Mine Workers Journal for August 15, 1944, an article by John L. Lewis, stating in part:

> "It was the Policy Committee, by unanimous vote, that rejected the jurisdiction of the War Labor Board and demanded the resumption of collective bargaining. The demand was not heeded, and when the thirty-day extension ended on April 30, the miners laid down their tools. This is our historic and automatic procedure. For 53 years, a contract has been our protection against rapacity and ill faith. No contract, no work. No stoppage order ever goes out. If a new agreement has not been signed before the expiration of the old, the men quit. Nevertheless, we were not careless of the national interest, for we knew that there were 79,000,000 tons of bituminous coal in storage."

Government's Exhibit 41



[redacted]

JOHN L. LEWIS

[redacted]

UNITED MINE WORKERS' BUILDING

[redacted]

November 15, 1946

TO THE MEMBERS OF THE UNITED MINE WORKERS OF AMERICA:

Greetings:

The following is the exact text of a letter sent to the Secretary of the Interior, in charge of Coal Mines Administration:

"November 15, 1946

Honorable J. A. Krug
Secretary of the Interior
Washington, D. C.

Dear Mr. Secretary:

In accordance with the provisions of the Krug-Lewis Agreement dated May 29, 1946, the United Mine Workers of America on October 21, 1946, officially requested a joint conference of the accredited representatives of the joint contracting parties to said agreement. Such conference convened on November 1, 1946.

Fifteen days having now elapsed since the beginning of said conference, the United Mine Workers of America, exercising its option, hereby terminates said Krug-Lewis Agreement as of 12:00 o'clock P. M., midnight, Wednesday, November 30, 1946.

Yours truly,

UNITED MINE WORKERS OF AMERICA

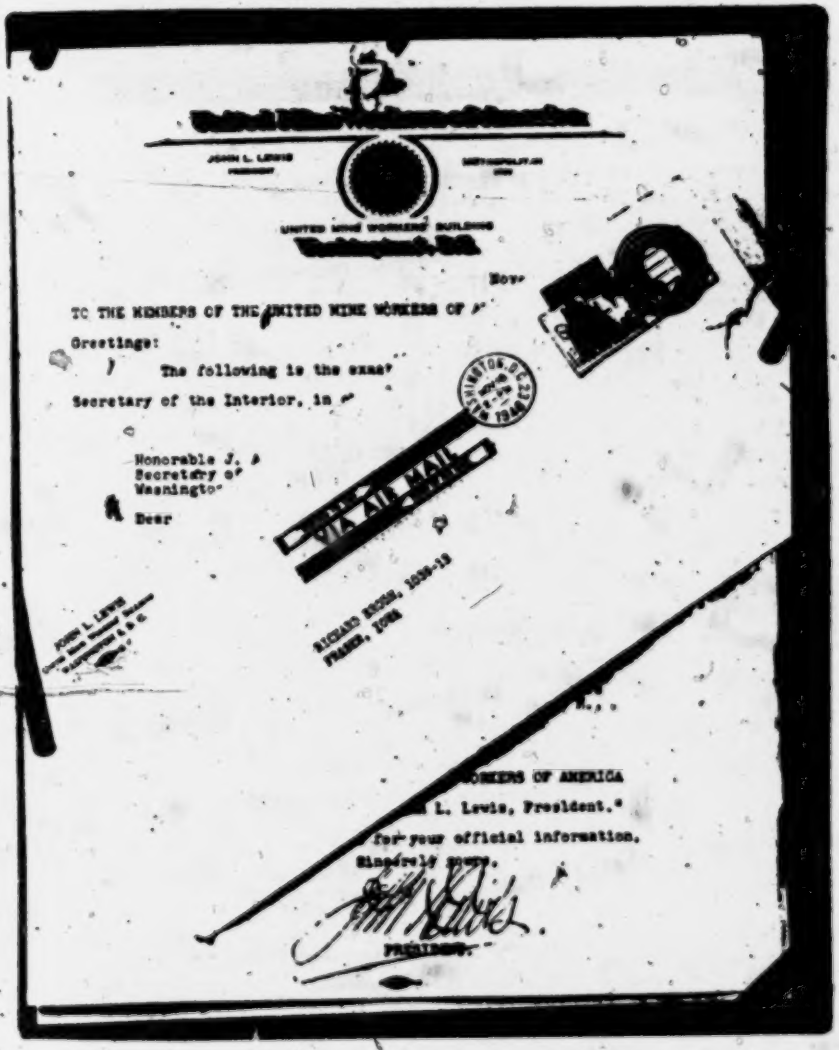
By: John L. Lewis, President."

The foregoing is for your official information.

Sincerely yours,

John L. Lewis

PRESIDENT.



TO THE MEMBERS OF THE [illegible]NITED MINE WORKERS OF [illegible]

Greetings:

The following is the exact [illegible]

Secretary of the Interior, in [illegible]

Honorable J. [illegible]
Secretary of
Washington

Dear

VIA AIR MAIL

[illegible]WORKERS OF AMERICA

[illegible] L. Lewis, President.

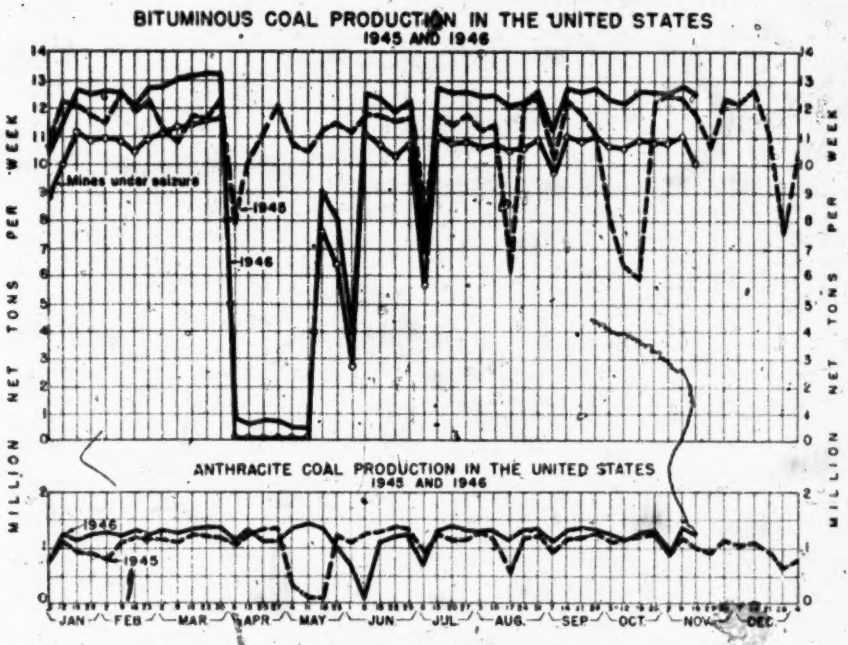
[illegible] for your official information.

Sincerely yours,

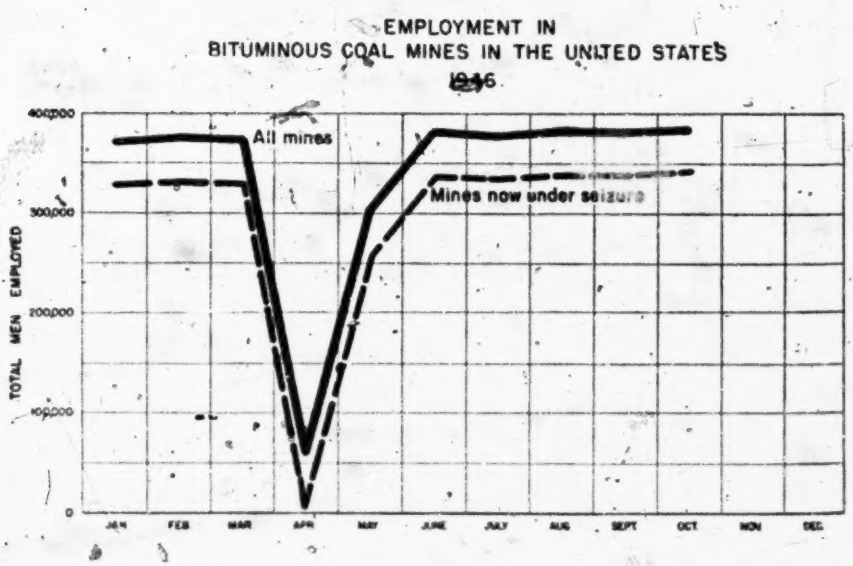
PRESIDENT.

NOTE.—The exhibit in evidence immediately following Government's Exhibit 41 is Government's Exhibit 45.

Government's Exhibit 45

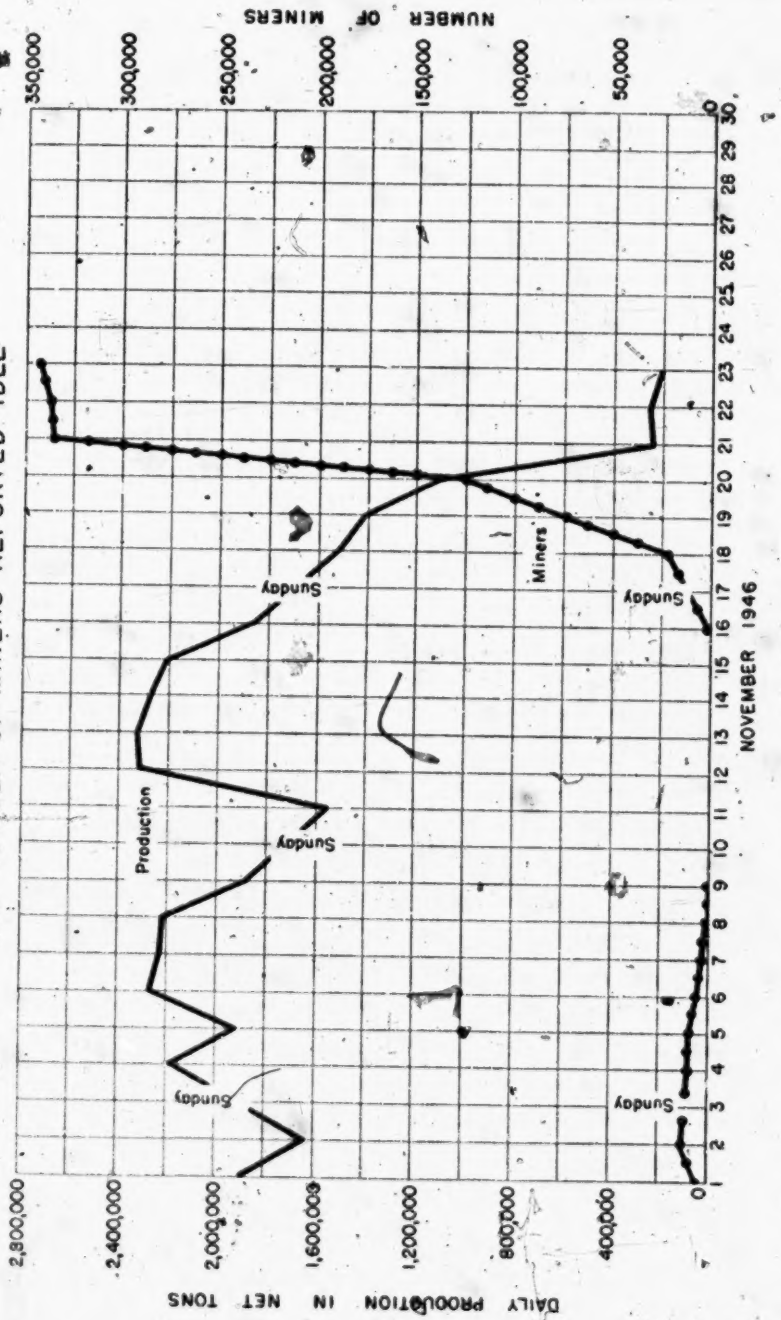


Government's Exhibit 46



Government's Exhibit 47

DAILY U.S. PRODUCTION OF BITUMINOUS COAL
AND NUMBER OF MINERS REPORTED IDLE



Government's Exhibit 48

TRANSCRIPT OF STATEMENT MADE BY JOHN L. LEWIS TO PARAMOUNT NEWS ON THE OCCASION OF THE SIGNING OF THE LEWIS-KRUG AGREEMENT ON MAY 29, 1946

FIRST TAKE

John L. Lewis

"A contract has just been covered by execution in the White House. It is a national bituminous agreement by and between the Government as represented by Secretary of the Interior Krug and the United Mine Workers of America. It settles for the period of Government operation all the questions at issue. It should be sustained and supported by the entire country, and I am confident that it will result in the immediate volume production of bituminous coal sufficient to fulfil all the requirements of the country. Telegrams are being sent to all local unions at once instructing them accordingly."

Secretary of the Interior Krug

"I believe that Mr. Lewis will agree with me that it is as fair to the operators as to the miners. It is too bad that we did not have it two months ago."

RETAKE

John L. Lewis

"A contract has just been executed in the White House governing the national bituminous coal industry. It settled for the period of Government operation of the mines—all the questions at issue. Instructions are being given the men in the field to return to work immediately."

Secretary of the Interior Krug

"I believe Mr. Lewis will agree with me that it's a contract that's fair to the operators and to the men. It's too bad we didn't have it two months ago."

Defendants' Exhibit 1

[Copy]

CMA1 : mve
OCTOBER 21, 1946.

MR. JOHN L. LEWIS,
President, United Mine Workers of America,
United Mine Workers Building, Washington 5, D. C.

DEAR MR. LEWIS: Secretary Krug has requested that I write to you with respect to the position of the Coal Mines Administration on two of the matters which were discussed with you at your meeting with him Saturday, October 19; namely, the pro rata retroactive vacation pay and measurement of tonnage to which 5¢ per ton for the Welfare and Retirement Fund is being applied.

Although we believe that the position heretofore taken by this Administration with respect to the application of the pro rata vacation clause represented a reasonable and proper interpretation of the May 29, 1946, Agreement, it has been concluded that, cases having proceeded

to the arbitrator in the Illinois District in accordance with the grievance procedure provided for in the District Agreement, the arbitrator's decision is final and binding upon the parties to the contract in accordance with its terms. Accordingly, I am advising the Illinois coal operators forthwith to comply with, and abide by, such decision.

Inasmuch as cases which might arise in other districts would involve only interpretation of the same clauses as those involved in the Illinois District cases and would present identical issues, I am accepting the Illinois decisions as controlling precedents and issuing the necessary order to the operators of mines in Government possession in all districts to comply with the interpretation found by the arbitrator in the Illinois cases.

With respect to the weights to be used in determining payment of the 5¢ per ton required by Section 4 (a) of the Agreement, I wish to inform you that the position of this Administration is that which has been consistently taken during the negotiation of the contract and since its execution; namely, the 5¢ is payable with respect to salable or usable coal produced and is not payable with respect to impurities or foreign substances which may be mined along with the coal but which are eliminated by cleaning or other processing before sale. The Administrator's Order CMAN-8 clearly requires weights to be determined "at the mines". It is, therefore, not intended to permit any loss to the fund which occurs through shrinkage of salable coal between the tipple and distant railroad scales, theft, or other loss of salable or usable coal which are not reflected in railroad weights. Operators who are not reporting and paying in accordance with this interpretation will be required to do so when any deviations are brought to our attention. This Administration is not willing, however, to accept tipple weights or other mine weights which admittedly include varying, and at times substantial, percentages of impurities and foreign substances which are removed from the coal before it is considered salable. Cleanings, dust, and other coal products which result from processing the run of mine coal and which are sold as coal should also be treated as coal produced for the purposes of the 5¢ per ton payments.

Although the underlying contract structure consisting of the district agreements provides machinery for the disposition of any disputes arising under the contract, and this machinery is believed available for disposition of any differences over the meaning of the provisions of the Welfare and Retirement Fund clauses in view of the fact that the differences between the Coal Mines Administration and the United Mine Workers are in general common to all mines in Government possession and control, this Administration is agreeable to the appointment of a mutually satisfactory umpire—preferably an outstanding jurist—to whom this dispute may be submitted for a determination to be applicable to all mines subject to the Agreement.

It is regretted that the final position of this Administration in these matters, particularly that dealing with the decisions of the arbitrator in Illinois, was delayed through circumstances beyond the control of either party pending the meeting between you and the Secretary, which was finally held on Saturday.

The Coal Mines Administration wishes emphatically to reaffirm its position that at no time has it been in intentional violation of the

Agreement of May 29, 1946, and that its interpretations of the Agreement have always been discussed with your representatives before being promulgated, and when promulgated over the objection of your representatives were only intended to serve as controlling guides to the operators—the grievance procedure for the settlement of disputes under the contract at all times having been open to the mine workers when they disagreed with the position taken by this Administration.

Very truly yours,

N. H. COLLISSON,
Captain, USNR,
Coal Mines Administrator.

Enclosure 2

Defendants' Exhibit 2

[Copy]

UNITED STATES DEPARTMENT OF THE INTERIOR,
COAL MINES ADMINISTRATION,
Washington 25, D. C., June 27, 1946.

Mr. JACK G. DAY,
Vice Chairman, National Wage Stabilization Board,
Washington, D. C.

MY DEAR MR. DAY: In accordance with the telephone conversation on June 27 between you and Mr. Messitte, there is submitted herewith for your information, a copy of a Memorandum of Agreement, dated and executed June 27, 1946, between the Coal Mines Administrator and the President of the United Mine Workers of America.

Inasmuch as the agreement does not modify terms and conditions set forth in the Krug-Lewis Agreement of May 29, 1946, no formal clearance would appear to be necessary.

Sincerely yours,

/s/ B. MORELL,
Admiral (CEC) U. S. N.,
Coal Mines Administrator.

Enclosure.

Defendants' Exhibit 3

[Copy]

JULY 1, 1946.

Mr. WILLARD WIRTZ,
Chairman, Wage Stabilization Board.

DEAR MR. WIRTZ: I enclose herewith copy of memorandum of Agreement between the Coal Mines Administrator and the United Mine Workers of America providing for an interim operating program to cover the collection and custodianship, pending appointment of trustees, of the monies to be paid in accordance with the provisions of Section 4 (a) of the Agreement between the Coal Mines Administrator and the United Mine Workers of America, dated 29 May 1946.

This is not considered a change in the Agreement requiring any action by your Board and is forwarded to you for your information and files.

/s/ W. RANDALL COMPTON,
General Counsel.

Enclosure.

Defendants' Exhibit 4

[Copy]

NATIONAL WAGE STABILIZATION BOARD,
Department of Labor Building,
Washington 25, D. C., July 3, 1946.

Admiral BEN MOREELL, USN,
Coal Mines Administrator,
United States Department of the Interior,
Washington 25, D. C.

DEAR ADMIRAL MOREELL: This will acknowledge in behalf of the National Wage Stabilization Board receipt of your letter of June 27, 1946, addressed to Mr. Jack G. Day, and a similar letter from Mr. W. Randall Compton, addressed to Mr. Willard Wirtz, under date of July 1, 1946, with regard to the Memorandum of Agreement, dated and executed June 27, 1946, between the Coal Mines Administrator and the President of the United Mine Workers of America.

It is the understanding of the Board that this Agreement is simply an arrangement for the receipt and safekeeping of the moneys to be paid in accordance with the provisions of Section 4 (a) ("A Welfare and Retirement Fund") of the Krug-Lewis Agreement of May 29, 1946, and that it does not contemplate any disbursement of such moneys prior to the appointment of the trustees.

Sincerely yours,

/s/ PHILLIPS L. GARMAN,
Vice Chairman.

Defendants' Exhibit 5

[Copy]

OCTOBER 22, 1946.

Honorable WILLARD WIRTZ,
Chairman, National Wage Stabilization Board,
Washington 25, D. C.

MY DEAR MR. WIRTZ: By your Board's order of May 31, 1946, certain changes in terms and conditions of employment in certain bituminous coal mines were ordered, including the provisions for vacation payments contained in the Krug-Lewis Agreement of May 29, 1946. In approving the paragraph of Section 7 of the Agreement dealing with pro rata vacation payments, your Board provided that any interpretative rules governing the making of pro rata payments should be submitted to your Board for such further consideration and action as may be appropriate under Section 5 of the War Labor Disputes Act.

Under date of June 7th, this Administration submitted to your Board a proposed interpretation limiting the pro rata application of vacation pay to a full calendar month, or months, and included persons who were discharged for cause.

Under date of June 12th, the then Vice Chairman of your Board requested certain additional information before passing upon the proposed interpretation. In reply to this letter, this Administration advised Mr. Day, among other things, that under the proposed

interpretation the pro rata payments would not apply to an employee who was not on the pay roll of a mine at the time of Government possession under the authority of Executive Order 9728.

Under date of June 20th, you advised me that your Board voted, industry dissenting, that no further action was required with respect to the interpretation of pro rated vacation payments under Section 5 of the War Labor Disputes Act. Subsequently, this Administration issued its Interpretative Bulletin No. 5, in which it took the position that the Krug-Lewis Agreement applied, by its terms, to the period of Government possession and does not, except where specifically so provided, change or modify the obligations of an employer to an employee which were completed and fully accrued prior to the date of Government possession, and that its provisions regarding pro rata vacation payments have no application to persons who were not on the pay roll during the period of Government possession and operation. The United Mine Workers' representatives protested this interpretation of the contract on the ground that it does not reflect the clear meaning of the contract provision.

Under this interpretative bulletin, coal-mining companies whose mines are in the possession and control of the Government have refused to pay pro rata vacation payments to employees who left the employ of the company prior to Government possession.

As a result, certain mine workers brought up cases for adjudication under the grievance procedure provided for in district agreements and other agreements which were carried forward and preserved by Section 1 of the Krug-Lewis Agreement and constitute part of the contractual relationship between the Coal Mines Administrator and the United Mine Workers.

Several of these cases have now proceeded through the final step of arbitration under the Illinois District Agreement and the arbitrator has ruled that Interpretative Bulletin No. 5 does not carry out the provisions of the Krug-Lewis Agreement and has allowed a pro rata vacation payment to miners whose employment was terminated some months prior to the period of Government possession and operation and who did not return to the employ of the same company during Government operation.

The Coal Mines Administrator feels that he is bound by decisions arrived at in accordance with the grievance procedure contained in the underlying contract structure revived and carried forward by the Krug-Lewis Agreement and that, in the case of the arbitrator's decisions referred to above, such decisions are final and conclusive under the contract.

This matter is being called to your Board's attention because of the correspondence referred to above and the provision contained in your Board's order of May 31st, also referred to above.

Will you kindly advise me at once of any position which your Board feels it should take in the premises?

Very truly yours,

N. H. COLLISSON,
Captain, U. S. N. R.,
Coal Mines Administrator.

cc: Area Officer-in-Charge.

Defendants' Exhibit 6

[Copy]

OCTOBER 30, 1946.

Captain N. H. COLLISSON, *U. S. N. R.*,
Coal Mines Administrator,
Department of the Interior,
Washington 25, D. C.

DEAR CAPTAIN COLLISSON: This will acknowledge receipt of your communication of October 22 concerning your intention to revise interpretation of rules governing pro-rata vacation payments as referred to in the Board's Order dated May 31 ordering certain changes in wages and terms and conditions in bituminous coal mines provided in the Krug-Lewis Agreement of May 29.

On October 30, 1946, the Board voted, industry dissenting, to inform you that no further action is required with regard to this matter under Section 5 of the War Labor Disputes Act.

Very truly yours,

W. WILLARD WIRTZ,
Chairman.

PLGARMAN: 1d.

Defendants' Exhibit 7

UNITED MINE WORKERS OF AMERICA

JOHN L. LEWIS, President. Telephone: MEtropolitan 0530

United Mine Workers' Building, Washington 5, D. C.

NOVEMBER 15, 1946.

Honorable J. A. KRUG,
Secretary of the Interior, Washington 25, D. C.

DEAR MR. SECRETARY: Your communication of November 14, 1946, has been received and carefully considered. The United Mine Workers of America now make reply.

On September 23, 1946, while in informal and private conference with you, we asked that the Coal Mines Administrator voluntarily modify and adjust the miners' working hours. Your attention was again (as it had theretofore been) directed to the brutal 54-hour underground schedule of the men laboring in the bowels of the earth. This was prior to the United Mine Workers' National Convention and prior to the recent national election. Since that date until receipt of your ukase of yesterday, you have remained silent and have deigned no reply to the 400,000 men who now serve the Government of the United States in the bituminous coal mines.

The Mine Workers on October 21, 1946, exercising their contractual right, gave the requisite 10-day notice and respectfully requested a conference with you on November 1. You, while touring the West

contemptuously replied that you would be in Tule Lake, California, and might find time to discuss the matter at that time and place, if the miners would journey westward to meet you there. Changing your mind, you finally designated your representatives to attend the conference, while you continued your tour until after Tuesday, November 5. You finally appeared on Monday, November 11. Since that date, you have graciously given of your time, in full and private conference, to the extent of three hours and fifty-eight minutes.

You were aware by the formal notice of October 21 of the operation of the ten-, fifteen-, and five-day provisions of the contract. On yesterday, November 14, twenty-five days after formal notice, you made your proposal.

Your statements to the contrary notwithstanding, the Mine Workers constantly from November 1 to and including November 11 made concrete proposals to you on the matters set out in the notice of October 21. You, cavalierly, now propose a 60-day freeze of the existing conditions on terms which you have first negotiated with the operators, who are strangers to the Krug-Lewis Agreement. You arbitrarily assert the right to designate that 60-day period to begin on November 16 and prescribe the method of conducting a conference between the Mine Workers and Operators during that period. You, likewise, assert that the Krug-Lewis Agreement can be "modified by mutual consent." Then, Sir, where do you find the legal or moral right to deny to the Mine Workers their plain contractual right to reopen the contract, as we respectfully requested on October 21?

Your proposal for this Operator-Miners' conference to supersede the conference now in existence since November 1 is sheer folly, an empty platitude, well known to you so to be. On September 13, under the auspices of Admiral Moreell in joint conference with us, the operators in writing revealed their divided household and, as epitomized by former Senator Burke, hautily, arbitrarily, and with blunt malice rejected the fundamental issues as presented to them by Admiral Moreell. You now, at the last hour, of the last day, yield to the blandishments and soothing siren voice of the operators and seek to place the United Mine Workers of America and its members between Scylla and Charybdis. This course we refuse to follow.

The Government of the United States seized the mines and entered into a contract. The Mine Workers do not propose to deal with parties who have no status under that contract. We do not propose to be driven like dumb beasts to the slaughter of slow strangulation envisioned by your proposal and the Operators' well known and long used tactics of evasion and delay. We call upon you to honor your contract.

This, therefore, Mr. Secretary, constitutes our reply in the negative to your proposal.

Yours truly,

NEGOTIATING COMMITTEE, UNITED MINE WORKERS OF AMERICA,
By JOHN L. LEWIS, *President*.

In the District Court of the United States for the District of Columbia

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Charles E. Stewart, Clerk of the District Court of the United States for the District of Columbia, hereby certify the foregoing pages numbered 1–49[illegible], both inclusive, to be a true and correct transcript of the record according to designations of record by counsel filed and made a part of this transcript, and pursuant to Rule 75 (g) of the Federal Rules of Civil Procedure of the District Court of the United States, in action entitled *United States of America*, Plaintiff, v. *United Mine Workers of America*, an unincorporated association, and *John L. Lewis*, individually and as President of the United Mine Workers of America, an unincorporated association, Defendants, Civil Action No. 37764, as the same remains upon the file and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court at the City of Washington in said District this — day of December 1946.

CHARLES E. STEWART,
Clerk.

———— ————,
Deputy Clerk.

In the District Court of the United States for the District of Columbia

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Notice of appeal

Notice is hereby given this 5th day of December, 1946, that United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as President of the United Mine Workers of America, hereby appeal to the United States Court of Appeals for the District of Columbia from the Judgments of this Court entered on the 4th day of December, 1946, in favor of Plaintiff, United States of America, and against said United Mine Workers of America and said John L. Lewis, individually, adjudging the said United Mine Workers of America and John L. Lewis, individually, guilty of civil contempt.

Welly K. Hopkins,
WELLY K. HOPKINS,
Edmund Burke,
EDMUND BURKE,
T. C. Townsend,
T. C. TOWNSEND,
Harrison Combs,
HARRISON COMBS,

Counsel for United Mine Workers of America, John L. Lewis individually, John L. Lewis, President, United Mine Workers of America.

Of Counsel:
Joseph A. Padway,
JOSEPH A. PADWAY,
Henry Kaiser,
HENRY KAISER,
James A. Glenn,
JAMES A. GLENN.

Filed December 5, 1946, Charles E. Stewart, Clerk.

In the District Court of the United States for the District of Columbia

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Notice of appeal

Notice is hereby given this 5th day of December, 1946, that United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as President of the United Mine Workers of America, hereby appeal to the United States Court of Appeals for the District of Columbia from the Judgments of this Court entered on the 4th day of December, 1946, against said United Mine Workers of America and said John L. Lewis, individually, adjudging the said United Mine Workers of America and John L. Lewis, individually, guilty of criminal contempt and imposing a fine of $3,500,000 on the United Mine Workers of America and $10,000 on John L. Lewis, individually.

Welly K. Hopkins,
WELLY K. HOPKINS,
Edmund Burke,
EDMUND BURKE,
T. C. Townsend,
T. C. TOWNSEND,
Harrison Combs,
HARRISON COMBS,

Counsel for United Mine Workers of America, John L. Lewis, individually, John L. Lewis, President, United Mine Workers of America.

Of Counsel:
Joseph A. Padway,
JOSEPH A. PADWAY,
Henry Kaiser,
HENRY KAISER,
James A. Glenn,
JAMES A. GLENN.

Filed December 5, 1946, Charles E. Stewart, Clerk.

U. S. GOVERNMENT PRINTING OFFICE: 1948

In the United States Court of Appeals, District of Columbia

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, JOSEPH W. STEWART, Clerk of the United States Court of Appeals, District of Columbia, hereby certify the foregoing pages numbered 1-497, both inclusive, to be a true and correct transcript of the record in the appeal entitled *United Mine Workers of America*, an unincorporated association, and *John L. Lewis*, individually and as President of the United Mine Workers of America, an unincorporated association, Appellants, v. *United States of America*, Appellee, as the same remains upon the file and of record in said Court.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court at the City of Washington in said District this day of December 1946.

JOSEPH W. STEWART,
Clerk.

Deputy Clerk.

CLERK'S COPY

Vol. IV

TRANSCRIPT OF RECORD

(Pages 499 to 560)

Supreme Court of the United States

OCTOBER TERM, 1946

No. 759

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION

No. 760

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA

No. 781

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 782

JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 811

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI IN NOS. 759 AND 760 FILED DECEMBER 6, 1946.
PETITION FOR CERTIORARI IN NOS. 781 AND 782 FILED DECEMBER 12, 1946.
PETITION FOR CERTIORARI IN No. 811 FILED DECEMBER 21, 1946.
CERTIORARI GRANTED IN NOS. 759 AND 760 DECEMBER 9, 1946.
CERTIORARI GRANTED IN NOS. 781 AND 782 DECEMBER 16, 1946.
CERTIORARI GRANTED IN NO. 811 DECEMBER 23, 1946.

APPENDIX

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Note.—The notice of the appeals of John L. Lewis and the United Mine Workers of America, an unincorporated association, from the judgments and sentences of the United States District Court for the District of Columbia are printed in Volume 3 of this record at pages 496 and 497.

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1 In the District Court of the United States for the District of Columbia

Holding a Motions Court

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

vs.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

WASHINGTON, D. C., November 25, 1946.

The above-entitled cause came on for hearing on a rule to show cause why the defendants should not be adjudged in contempt of court, before Hon. T. ALAN GOLDSBOROUGH, Associate Justice, at 10 o'clock a. m.

Appearances:

On behalf of the Government: JOHN F. SONNETT, Assistant Attorney General; JOHN FORD BAECHER, Special Assistant to the Attorney General; JOSEPH M. FRIEDMAN, Special Assistant to the Attorney General; J. FRANCIS HAYDEN, Special Assistant to the
2 Attorney General; ROBERT L. WERNER, Special Assistant to the Attorney General; GEORGE MORRIS FAY, United States Attorney, District of Columbia.

On behalf of the Defendants: WELLY K. HOPKINS, 900 15th Street NW.; EDMUND BURKE, Springfield, Illinois; T. C. TOWNSEND, Charleston, West Virginia; HARRISON COMBS, 900 15th Street NW.; JOSEPH A. PADWAY, 738 Bowen Building; HENRY KAISER, 736 Bowen Building; JAMES A. GLENN, 736 Bowen Building.

3 PROCEEDINGS

The COURT. You may proceed when you are ready, gentlemen.

Mr. SONNETT. If the Court please, the Government is ready and desires to file a copy, and serve it on the defendants, and does hereby serve it on the defendants of its views concerning the issues on the hearing on the rule to show cause now before this court.

The COURT. Has this been served on the defendants?

Mr. SONNETT. I have just served it on the defendants, Your Honor.

The COURT. This is a rule to show cause based on the provisions of Section 387 of Title 28 of the United States Code Annotated, the provisions of which are as follows:

"Whenever it shall be made to appear to any District Court or judge thereof or to any judge therein sitting by the return of a proper officer of a legal process upon the affidavit of some capable person, or by information filed with any District Attorney that there is good ground for belief that any person has been guilty of such contempt of court, the judge thereof or any judge therein sitting may issue a rule requiring the said person so charged to show cause on a date certain why he should not be punished therefor, which rule, to-
4 gether with a copy of the affidavit or information shall be served upon the person charged with sufficient promptness to enable

him to prepare for and make return of the order at the time fixed therein. If, upon such return, in the judgment of the court, the alleged contempt is not sufficiently purged, trial shall be granted at the time and place fixed by the Court."

Now, I have not, of course, read this brief, I have just seen it. The procedural matter is novel; insofar as I know there is no precedent to guide the Court, and the Court will hear both sides, of course, as to your views; but tentatively, what the Court sees in this picture is this, that if the defendant at this hearing denies he is in contempt of court, then the matter is set down for trial; if the defendant, on the other hand, claims that either directly or by implication, admits the contempt, but claims that he has purged himself, why, then, he should be heard. Now, that is the picture I see. I will hear both sides on those views as to just what the procedure should be.

Mr. HOPKINS. With the procedure as I understand to be announced by your Honor we take no exception, but on the contrary agree as to the procedure.

The COURT. All right, what is the Government's view?

Mr. SONNETT. The rule to show cause——

5 Mr. HOPKINS. Pardon me, in agreeing to the procedure as I understood it to be announced by Your Honor, I think it is only fair to say that the defendants through counsel are prepared to make a statement to the Court enunciating their positions. As to whether the Court will want to hear it now or discuss the procedures outlined by the Court, is a matter for the Court to suggest.

The COURT. Well, the Court thinks that probably first we should decide on the procedure, so that it may be conducted in a regular and orderly manner. The Court has given you its view tentatively on what the procedure should be.

Mr. HOPKINS. The procedure, as I understand the Court, if it is desired, the defendants would accede to the court procedurally. I don't know just what the Government had in mind in response to that point, but I merely want to put them on notice and say to the Court that we have this statement to make and will make it now or later, as the case may be.

The COURT. The Court will hear you later.

Mr. SONNETT. May I inquire, if the Court please, I do not know whom counsel is appearing before. Before we proceed further, we have noted the Government's appearances. I don't know whether counsel is appearing for one or both defendants.

Mr. HOPKINS. In response to that, Your Honor, it was the intention of counsel for the defendants, as a matter of record, to pre-

6 sent to the Court and identify counsel, and with your permission I will do it now.

For the record, my name is Welly K. Hopkins, counsel for the United Mine Workers——

The COURT. Are you a member of this bar?

Mr. HOPKINS. No, sir. Associated with us are members of this bar.

The COURT. I would suggest, sir, that some member of this bar introduce counsel who are not members of this bar, and ask that they be allowed to participate in the trial, which request the Court will immediately grant.

Mr. HOPKINS. Very well, sir. Mr. Combs, who is a member of this bar, will do that.

Mr. COMBS. I am a member of the bar of the District of Columbia.

Mr. Welly K. Hopkins is a member of the bar of the State of Texas and counsel for the United Mine Workers.

Mr. Edmund Burke is a member of the bar of the State of Illinois——

The COURT. Very glad to have you, sir.

Mr. COMBS. Mr. T. C. Townsend is a member of the bar of the State of West Virginia.

We have associated with us as counsel Mr. Joseph A. Padway, who expects to participate in the case in the event that he is back in the city. He is out of the city. With Mr. Padway we have Mr.
7 Henry Kaiser, a member of the bar of the State of Wisconsin.

We have with us also Mr. James A. Glenn, a member of the bar of the District of Columbia, and of Ohio.

Your Honor, I move that for the purposes of this suit these gentlemen whom I have mentioned be admitted.

The COURT. They are admitted, gentlemen.

Mr. HOPKINS. Your Honor, it might be well to state to Your Honor that counsel who have been introduced to the Court as now identified appear for each of the several defendants, that is to say, for the United Mine Workers of America as such, for Mr. John L. Lewis individually and Mr. John L. Lewis in his official capacity as president of the United Mine Workers.

The COURT. All right.

Mr. SONNETT. May I respectfully request the Court to inquire further, whether the appearance is a general appearance for each defendant and whether the individual defendant has been produced personally in response to the order to show cause.

Mr. HOPKINS. The United Mine Workers of America appear by and through its president, Mr. John L. Lewis; Mr. John L. Lewis appears as a defendant individually, and in his official capacity as president of the United Mine Workers of America and also is present in court, and we appear for him.

8 The COURT. He is also here representing the United Mine Workers?

Mr. HOPKINS. That is correct, sir.

The COURT. All right.

Mr. SONNETT. Now, does Your Honor desire the Government to state its views as to the procedural question?

The COURT. Yes, sir.

Mr. SONNETT. The rule to show cause issued by Your Honor on November 21, 1946, and served upon the defendants herein provides in part, and I will quote:

"It is further ordered, that in the event upon or by the return or returns of said United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as president of the United Mine Workers of America, it shall be found that the alleged contempt is not sufficiently purged, a trial shall be and is hereby directed to be held on the 27th day of November 1946 at 10 o'clock in the forenoon of that day, at a term of the District Court of the United States for the District of Columbia, to be held in Room 319,

The Municipal Court Building, 5th and E Streets, Northwest, District of Columbia, or at such other day as shall be determined by this Court."

That, Your Honor, is from the provisions of the rule to show cause——

The COURT. Well, it follows the statute, those words
9 the statute exactly.

Mr. SONNETT. And follow it well, sir, in our view, the requirements of the cases dealing with the subject, which I shall come to with the Court's permission in a moment.

The COURT. Yes.

Mr. SONNETT. It is plain from the terms of the rule to show cause and under settled law, we believe, that only two issues are before the Court at this time on the rule to show cause: First, whether the contempt as alleged is established, and second, whether the alleged contempt has been sufficiently purged.

The return of the defendants not having yet been made, if the Court please, the Government is unable to present to the Court any views on the question whether the contempt as alleged has been purged. So far as we are aware the defendants have taken no action up to this time to withdraw the alleged notice of termination of the so-called Krug-Lewis contract.

With respect to the question whether the petition and the papers allege a contempt, I should be very happy to offer argument to Your Honor on that point, that is, that the papers now before this Court do allege a contempt of court.

The COURT. Well, it is not necessary.

As counsel for the defendants are of the opinion that these
10 documents in this case do not allege a contempt, the Court will hear them and then, if it is necessary, I will hear you further.

Mr. SONNETT. Thank you, Your Honor.

Mr. HOPKINS. If it please the Court, it has occurred to counsel for the defendants that it is perhaps the proper juncture to make a statement to the court with reference to their position first on the contempt, as indicated a few moments ago, that counsel would do, and would perhaps clarify the procedural questions that may be involved before us.

Speaking in behalf of the defendants, and each of them, I would say to Your Honor that the defendants in this cause, United Mine Workers of America, John L. Lewis individually, and as president of the United Mine Workers of America, now appear before Your Honor in response to the rule to show cause which has heretofore been issued. Involved in this case is the notice of November 15, 1946, given by these defendants to the Secretary of the Interior of the termination of the so-called Krug-Lewis agreement, given prior to the filing of this case.

It was by the defendants, Your Honor, given in good faith; it was given by them upon the advice of counsel; it was intended solely to protect the interests of the United Mines Workers of America and its members.

The complaint for the declaratory judgment and injunctive
11 relief, the temporary restraining order and the rule to show cause issued thereupon, stemmed from a controversy involving said notice and its giving.

The United Mine Workers of America, Your Honor, and Mr. Lewis individually, and in his official capacity, have no desire, no intent to refuse or withhold due and proper recognition of this Honorable Court's authority. On the contrary, Your Honor, it is their desire and the desire of each of them, now and at all times to accord full and complete deference and respect to this Court, Your Honor, and to all the courts of our common country.

Such is their attitude now, collectively, and individually in this instant proceeding.

The defendants, and each of them, however, believe, Your Honor, that their action in giving said notice and all their actions subsequent thereto, have been both legal and proper.

They now make the following return to Your Honor's rule to show cause issued on November 21, 1946, as follows:

The defendants and each of them respectfully state to the Court that they and each of them, since the giving of said notice of November 15, 1946, since the issuance of Your Honor's temporary restraining order of November 18, have done no act nor spoken any word pertaining to said notice or in reference to permitting it to continue in effect.

12 The status of the notice and the position of each of the defendants in reference thereto remains today in the status which existed at the time of its giving and at all times subsequent thereto.

The defendants and each of them, Your Honor, therefore respectfully say to this Court that the situation with respect to such notice of November 15, 1946, for the reasons herein stated remains unchanged.

The defendants and each of them respectfully deny the jurisdiction of this Honorable Court to have issued the temporary restraining order and the rule to show cause issued thereunder.

The defendants will be prepared to present arguments on this question on November 27, the time fixed by the Court in its order, as we understand it, for the hearing of this case.

That, sir, is intended to be in response to Your Honor's rule, and to give proper return to the rule, and to announce to the Court the position that the defendants, as they see it, occupy at this time; acceding to Your Honor's suggestion, as we understand it, that return having been made to Your Honor's rule, the matter would, under your order, be set for trial, as we understood the Court to suggest, at 10 o'clock Wednesday morning, as set out in your original rule.

That, sir, is the statement we desire to make.

The COURT. Do you have a written return?

13 Mr. HOPKINS. No, sir, what I have stated to the Court is more or less of a speaking declaration, in which we hoped and attempted to give the Court a full disclosure of our position.

The COURT. I will request the reporter to write out the remarks of Mr. Hopkins regarding the position of the defendants as to the Court's restraining order and the rule to show cause and make it a part of the record.

Miss Jobe, put it in the record.

Miss JOBE. Yes, Your Honor.

Mr. SONNETT. If the Court please, various of the statements of counsel purport to be statements of fact as to what the defendants and each of them believe.

The COURT. Well, I understand the defendants to say, sir—and of course, I am not deciding this case now—the case is to be tried, but I understand the defendants to say that since November 15 when they gave the notice to the Secretary of the Interior, that they have taken no action of any kind whatever. That is my understanding of what the defendants say.

Mr. HOPKINS. That is correct, sir.

Mr. SONNETT. My first question, if the Court please, was whether I am to understand that the Court understands that what counsel has said amounts to an offer of proof which he will make at the
14 trial? I merely wish to observe that he has made certain statements as to the facts and if it is an offer of proof to be made at the trial, I am perfectly willing to assume that counsel will offer that evidence.

The COURT. Do you mean that the defendants have to offer proof that the defendants have not done anything?

Mr. SONNETT. I believe as to the defendants having issued the notice——

The COURT. The question whether it is evidential or not the Court will have to decide.

Mr. SONNETT. That is correct, and I heartily subscribe to Your Honor's view.

On the question whether the defendants have taken no action since the restraining order can amount to a contempt, I am now prepared and with the Court's permission would like to offer argument on that point.

In our view——

The COURT. Now, let's see. Now, the Court is not going to cut anybody off, I don't mean that by what I am about to say. This is the situation as the Court sees it. The Court issued the restraining order. The Government comes in and says that on information and belief the restraining order has not been obeyed. On the return day, which is today, the defendant comes and make a statement categorically through his counsel—the defendants, I should say through their counsel, that they have done nothing since they gave the
15 notice that the Krug-Lewis contract no longer was in effect, to the Secretary of the Interior and the miners. Now that is what they say.

Now that is equivalent to saying that they did not obey the restraining order, but they say that we did not have to obey the restraining order because it was not legal.

Now those are all matters which will have to be taken up on Wednesday, aren't they?

Mr. SONNETT. If I understand Your Honor, from the statements of the defendants' counsel——

The COURT. That is their position. I am not expressing any opinion as to the correctness of their position or its incorrectness, I mean, that seems to be their position.

Mr. SONNETT. Their position is, Your Honor, that they have taken no action and that that would constitute a contempt of this Court if a legal contempt is charged, then I am quite prepared to agree that the matter should await the outcome of a trial.

On the other hand, if counsel asserts that failure to take action could not constitute a contempt, I think argument would be proper, and I am prepared to make that argument.

The COURT. I do not think it is necessary to make that argument to this Court.

MR. SONNETT. If Your Honor would prefer that the argument be deferred——

16 The COURT. I think it would be better; yes, sir. This is a tremendously serious matter and the more consideration, thought, and contemplation that the parties can give to it the better results will probably obtain. Now, I don't want—suppose you sit down a minute——

Mr. SONNETT. Yes, sir.

The COURT. I don't want to be extrajudicial, but I don't think a situation like this has ever confronted society before or confronted a court before—I have never heard of one.

You see, when the Government presented its complaint to the Court the Court had two things to consider, whether or not a delay of eight or ten days would endanger the plaintiff; and secondly, whether or not the matter in the complaint justified judicial consideration.

Now, this complaint is not filed by a private employer, but by the sovereign, power, by society itself, and there is a general rule that where language in a statute makes no reference—unless it includes the sovereign power, unless it includes society itself, that society itself if not included.

Now, I presume that the defendants will claim that that rule does not apply in this case, but that the Norris-LaGuardia Act applies, and I cannot say today, and I have no opinion, because I am not allowed to have an opinion until after the case is tried, as to
17 the correctness of that position; but the defendants are inevitably going to be confronted when the trial is had with this thought: Instead of waiting for a judicial determination as to whether their position is correct or not, they undertook to decide the law for themselves.

Now I do not think any thinking person in this country wants to see anything happen to the labor unions which will interfere with their continued effectiveness so far as raising the general standard of living is concerned. Capitalism is, of course, a tremendous agent for production—even Karl Marx has admitted that time and time again, but it is weak on the consumptive side and labor unions are one of the most effective things to endeavor to supplement the consumptive side of capitalism.

Of course, I cannot do anything more than just outline the situation as it appears. The Court hopes that the unions will not take such a position as will cause such public feeling as to induce Congress to do something which may set the labor movement back for years.

Now I do not know whether I am justified in making that statement or not—it is extrajudicial, of course, but it is something that I hope will be borne in mind.

Now, gentlemen, is there anything the Court between now and Wednesday morning at 10 o'clock?

Mr. SONNETT. So far as the Government is concerned, Your Honor; no.

18 I should merely like to suggest to Your Honor that our brief takes the position that whether or not the Norris-La-Guardia Act is applicable, the defendants, by their action, are in contempt of this Court. I do not think it requires argument now. We have fully briefed the point and have served counsel copies of our brief.

Mr. HOPKINS. If it please the Court, with reference to the statement just made by counsel for the Government with reference to the brief which was only a few moments ago handed to us, and bearing in mind, Your Honor, the time element, of course, that is very much felt by the presentment of both sides who have labored in the preparation of this case, and bearing in mind also Your Honor's statement of a few moments ago, as I understood it, that the problems that would flow from the trial of this issue are certainly grave in nature and certainly are complex in many of the facets and problems as they will develop, and bearing in mind also the fact that it is the desire, certainly of all counsel for the defendants, and I am quite confident equally so of the Government, that when the issue comes to trial that each of us be adequately prepared in the way of legal presentation, both to conserve Your Honor's time and to give Your Honor such analysis as we may find available to ourselves under the authorities, we have suggested to Your Honor in the speaking declaration just given to the

19 Court that we would be ready on Wednesday morning; if that is Your Honor's wish we will undertake to meet it, but I would like to say to Your Honor that without undertaking to influence Your Honor's thinking concerning their presenting the problem that instead of that, might I suggest to you, sir, for your consideration, whether or not it would be advisable and would meet the convenience of all parties interested in this case——

The COURT. Can you say also that it is possibly in the public interest?

Mr. HOPKINS. Yes, sir; I will be delighted to say that, sir, because I think it is inherent in this, that the public interest, sir, runs through this proceeding, and I say to you in the public interest unqualifiedly, that the date, rather than 10 a. m. on Wednesday, be extended.

There is one little personal reason that I might suggest to Your Honor, although, of course, it runs not to the merits of your decision, I should tell you this, that one of counsel, Mr. Joseph Padway, is out of the country and was out of the country at the time the proceedings were originally instituted. I spoke with him on the long-distance telephone in Honolulu yesterday and he is taking a plane and is on his way back to Washington now and hopes to be available, if possible, on Wednesday, and his counsel is desired and sought by the defendants and counsel collectively.

Returning to the problem that Your Honor has suggested

20 today, the very weight and the weighty result that will flow from a proper decision, and a desire to be of full assistance in disclosing to Your Honor all the authorities that may be available, and the analysis thereof, and in the interest of the development properly of the case most expeditiously and certainly, also in the light of public interest, we respectfully suggest to Your Honor the consideration of an enlarged or extended time—enlarging or extending the time now set, instead of 10 a. m.

We do not have any reason other than the one personally stated. It is not for delay at all, sir; it is in order that equity shall be well and completely done that the suggestion is submitted to Your Honor for your consideration.

Mr. SONNETT. If the Court please, the Government is opposed to any adjournment of this matter beyond the date already set by Your Honor in the rule to show cause, November 27, this coming Wednesday.

The COURT. That date was set, sir, but that date was not made—it was not made positive.

Mr. SONNETT. That is entirely correct, sir—I don't mean to imply that Your Honor had no power to change it. The Court, of course, has all power, but I should like to say to Your Honor that so far as the Government is concerned we oppose any adjournment beyond the 27th, because in our view a contempt of court has been com-
21 mitted, is being committed, and will continue to be committed until disposition of this matter by this Court, and that that contempt is causing increased damage to the public, which is irreparably hurt by it, and therefore the public interest in the case, not the defendants, have an extension of time during which they may continue the contempt of court, but rather that the matter be disposed of at the earliest date.

The COURT. There are two ways of looking at it. Of course, the defendants have had since the 18th of November to reach a conclusion as to what their attitude should be, and also to determine the manner—I mean nine days from the 18th to the 27th, and if the Court had any reasonable assurance that it was possible to avoid this issue by any extension of time, the Court would consider it very carefully, but in the absence of that, and assuming as the Court does, that it does seem to it as though the defendants had had a fair opportunity to make preparation for the hearing on the merits, and in face of the Government opposition, the case will be set down for trial on Wednesday the 27th.

Mr. SONNETT. May I say further, Your Honor, the Government's position is that if the defendants comply with this Court's directions we will be happy to consent to an adjournment which the defendants desire and the Court rules.

The COURT. All right.

Mr. HOPKINS. If Your Honor please, if you will pardon,
22 merely as a matter of procedure, I want to interpose this question of a legal sort. In the temporary restraining order Your Honor set for 10 o'clock on Wednesday, the matter of the temporary injunction. Now that is the identical hour that is now set for the trial upon the issues involved in the rule. I make inquiry of the Court as to the status of that matter.

The COURT. The Court is of the opinion that would—what would be done would be the question of the contempt would be passed upon first, and then immediately following the Court will consider the merits of the question whether there should be a declaratory decree.

Mr. HOPKINS. Yes.

The COURT. Is that in accordance with the view of counsel on both sides?

Mr. SONNETT. Yes, Your Honor; we request at that time, respectfully, that the Government authorities be considered both with the contempt and with the question of the issuance of the temporary injunction.

The COURT. There is no reason why it should not be done.

So far as I know there is nothing further before the Court in this case today then.

We will adjourn until Wednesday any subsequent proceedings in this matter.

23 In order that those interested in this matter and not in the subsequent proceedings may be able to leave the Court in an orderly manner, the Court will take a five-minute recess.

(Thereupon, at 10:35 o'clock a. m., the hearing in the above-entitled matter was adjourned until Wednesday, November 27, 1946, at 10 o'clock a. m.)

Reporter's certificate

I, O. H. FROST, an official reporter for the District Court of the United States for the District of Columbia, hereby certify that the foregoing is the official transcript of the proceedings had in the above-entitled cause.

O. H. FROST,
Official Reporter.

Reporter's certificate

I, O. H. FROST, one of the official reporters to the District Court of the United States for the District of Columbia, hereby certify that the foregoing is the official transcript of the proceedings and testimony had in the above-entitled cause as appears on pages 1 to 571, both inclusive.

O. H. FROST,
Official Reporter.

In the District Court of the United States for the District of Columbia

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, ET AL., DEFENDANTS

Order directing clerk to certify and forward the original record to the United States Court of Appeals, District of Columbia

The defendants having on December 4, 1946, given notice of an appeal from the Judgments and Sentences made by the Court on that date and having on December 5, 1946, filed their written notice of appeal, and good cause appearing therefor:

It is ordered that the clerk of this Court forthwith certify and forward to the United States Court of Appeals for the District of Columbia the original and all of the papers and records on file in this Court which shall be and constitute the record on appeal in said cause:

It is further ordered that the clerk of this Court prepare as promptly as possible a true and correct and certified copy of said record on appeal and, with the permission by order given of said Court of Appeals substitute the same in the place and stead of said original papers and records, which, upon such event shall be returned and lodged in this Court for such further action as is appropriate.

(S) T. ALAN GOLDSBOROUGH, *Justice.*

DECEMBER 5, 1946.

[Filed Dec. 5, 1946. Charles E. Stewart, Clerk.]

DEC. 6, 1946, *10 A. M.*

U. S. v. *Lewis*, et al., CA 37764

CONFERENCE IN CHAMBERS

Mr. PADWAY. In this case, Your Honor, the situation is this: yesterday afternoon counsel for the Government submitted an order which, in effect, was to have the original record forthwith sent to the United States Circuit Court of Appeals. The order was shown to us, we read it through. We informed the gentlemen that we had no objection to the form of the order, but we did not want it construed as a waiver of such rights as we had with respect to the designation of the record, the docketing of the same and the time allowed us in which to perfect our appeal, beyond the filing of the notice, which was had yesterday afternoon, or yesterday morning, in the United States District Court Clerk's office.

Now, it seems to us, or to me, at least, that the Government puts a construction on that as though it were a stipulation constituting a waiver of our rights.

Let there be no mistake concerning that. We emphatically state that we did not intend that that order shall have the effect of a stipulation waiving any rights that are ours under the rule.

Mr. HOPKINS. We did not and we do not now.

Mr. PADWAY. We further request and now move that the order be vacated and set aside, unless the Government agrees with our construction, and that we be allowed to take the course prescribed by the rules and to exercise such rights as are ours on the appeal.

The COURT. Now, you will mark that as Mr. Padway's statement.

This is the Court's statement.

The Court's statement is that the order was agreed to by both sides last night. The Court, at the time, or about the time that the order was signed said the Court understands that all parties wanted to get this case up as rapidly as possible, and there was an assent. The Court signed the order. That is all the Court knows about it.

Mr. BAECHER. I would say this, in behalf of the Government, if Your Honor please: that this order was prepared by the Government and presented to Your Honor after the appellants had filed their notice of appeal. It was brought in and submitted to Your Honor at a regularly scheduled session of this Court in chambers. It was submitted to counsel at the same time it was submitted to and explained to Your Honor, and counsel for the appellants expressly stated that they were agreeable to the order. It was explained at the time that it meant only what it said and that is, that there will be certified immediately to the Circuit Court of Appeals—because of the delay that would have ensued by making a copy of the original papers on file in this court—those papers to be returned, those original papers to be returned to this court as soon as there could be prepared and substituted in the Circuit Court of Appeals, certified copies of those papers, the return to be for such further appropriate action as is necessary or required in this cause.

The object of presenting this order, as was obvious, we thought at the time, explained by Mr. Sonnett, was to have a speedy hearing on this appeal, which had been duly noted. It is the position of the Government that an appeal having been taken there should be—because of the great urgency of the question and the importance—as prompt as possible a disposition, of that matter on appeal.

It is submitted that the order was entirely proper, within the power of the Court, and that there is precedent in this Court, acting through esteemed judges in entering a similar order.

The COURT. The Court will supplement its previous statement, that upon hearing counsel for the Government, the Court remembers that the Court was somewhat confused about the meaning of the order, but the Court felt that there was no reason why we should wait for a transcript, and then the Court's attention was called to the language that the order actually followed the Court's suggestion. That was all gone into by counsel last night.

Gentlemen, I am going on the bench unless there is something further.

Memorandum of those present at the conference: Representing the Appellants: Joseph A. Padway, Esq., Welly K. Hopkins, Esq. Representing the Government: John Ford Baecher, Esq.

In the District Court of the United States for the District of Columbia

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

The undersigned has filed notice of appeal to the United States Court of Appeals for the District of Columbia to reverse or modify the judgment rendered by the District Court of the United States for the District of Columbia in the above-entitled cause on December 4, 1946, and to supersede said judgment is required to give a bond secured by cash deposit with the Clerk of the above Court, in the sum of $10,000.00, conditioned for the satisfaction of the judgment in full, with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full such modification of the judgment and such costs, interest, and damages for delay as the appellate court may adjudge and award.

Wherefore, the undersigned appearing and submitting to the jurisdiction of the court, hereby undertakes for himself, his heirs, executors, administrators, successors, and assigns to comply with the conditions as above set forth, and does further agree that, upon default in any of the conditions hereof, the damages, costs and interest may be ascertained in such manner as this Court shall direct; that this Court may give judgment hereon in favor of any person thereby aggrieved against him for the damages, costs and interest, suffered or sustained by such aggrieved party, and that said judgment may be rendered in the above entitled cause or proceeding against the undersigned.

The undersigned hereby irrevocably appoints the clerk of this Court as his agent upon whom any papers affecting his liability on this undertaking may be served.

Signed and delivered this 5th day of December 1946, in the presence of:

(S) JOHN L. LEWIS.

(S) WELLY K. HOPKINS.
(S) HENRY KAISER.

Bond approved this 5th day of December 1946.

(S) T. ALAN GOLDSBOROUGH, *Justice.*

[Filed Dec. 5, 1946. Charles E. Stewart, Clerk.]

In the District Court of the United States for the District of Columbia

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

CITY OF WASHINGTON,
District of Columbia, ss:

John L. Lewis, being first duly sworn under oath, deposes and says: That he is the duly elected President of the United Mine Workers of America; that pursuant to powers vested in the office of president by Section 7, Article IX of the Constitution of the International Union, United Mine Workers of America, a true copy of which is attached hereto, he has authorized Thomas Kennedy, duly elected and active Secretary-Treasurer of the United Mine Workers of America, to assign, transfer and deliver such United States bonds that are registered in the name of the United Mine Workers of America as may be necessary for the purpose of deposit with the Clerk of the United States District Court for the District of Columbia as security for bond given by the United Mine Workers of America to secure payment of judgment rendered against the United Mine Workers of America on December 4, 1946, in the above-styled cause.

(S) JOHN L. LEWIS.

Subscribed and sworn to before me this 6th day of December 1946.

DOROTHY L. PARKER, *Notary Public.*

[Filed Dec. 5, 1946. Charles E. Stewart, Clerk.]

In the District Court of the United States for the District of Columbia

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

The undersigned has filed notice of appeal to the United States Court of Appeals for the District of Columbia to reverse or modify the judgment rendered by the District Court of the United States for the District of Columbia in the above-entitled cause on December 4, 1946, and to supersede said judgment is required to give an undertaking, under seal, secured in lieu of cash by the deposit of United States bonds with the Clerk of the above Court as shown and identified in the attached schedule, in the sum of $3,500,000, conditioned for the satisfaction of the judgment in full with costs, interest, and damages for delay, if for

any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full such modification of the judgment and such costs, interest, and damages for delay as the appellate court may adjudge and award.

Wherefore, the undersigned United Mine Workers of America, an Unincorporated Association, appearing and submitting to the jurisdiction of the Court, hereby undertakes for itself and its executors, administrators, successors, and assigns to comply with the conditions as above set forth, and does further agree that, upon default in any of the conditions hereof, the damages, costs, and interest, may be ascertained in such manner as this Court shall direct; that this Court may give judgment hereon in favor of any person thereby aggrieved against it for the damages, costs, and interest, suffered or sustained by such aggrieved party, and that said judgment may be rendered in the above-entitled cause or proceeding against it.

The United Mine Workers of America hereby irrevocably appoints the clerk of this Court as its agent upon whom any papers affecting its liability on this undertaking may be served.

Signed, sealed, and delivered this 5th day of December 1946, in the presence of:

[SEAL] UNITED MINE WORKERS OF AMERICA,
By THOMAS KENNEDY,
Secretary-Treasurer.

WELLY K. HOPKINS.
HENRY KAISER.

Bond approved this 5th day of December 1946.

T. ALAN GOLDSBOROUGH, *Justice.*

[Filed Dec. 5, 1946. Charles C. Stewart, Clerk.]

PROPERTY OF UNITED MINE WORKERS OF AMERICA

2% Treasury coupon bonds—1951–1953, $10,000.00 each, numbered: 25706 E, 25707 H, 25708 J, 25709 K, 25710 L, 25711 A, 25712 B, 25713 C, 25714 D, 25715 E, 25716 F, 25717 H, 25718 J, 25719 K, 25720 L, 25721 A, 25722 B, 25723 C, 25724 D, 25725 E.

2% Treasury coupon bonds—1952–1954 $10,000.00 each, numbered: 75206 F, 75207 H, 75208 J, 75209 K, 75210 L, 75211 A, 75212 B, 75213 C, 75214 D, 75215 E, 75216 F, 75217 H, 75218 J, 75219 K, 75220 L, 75221 A, 75222 B, 75223 C, 75224 D, 75225 E, 75226 F, 75227 H, 75228 J, 75229 K, 75230 L, 75231 A, 75232 B, 75233 C, 75234 D, 75235 E.

$100,000.00 each, numbered: 24764 D, 24765 E, 24766 F, 24767 H.

$1,000,000.00 registered Treasury bond 1963–1968, No. 546 F.

Total page 1 ..... $1,600,000.00

(Pencil note): Dec. 6, 1946.

The above bonds received for deposit in C. A. No. 37764.

CHAS. E. STEWART,
Clerk.

By (S) H. M. HULL,
Dep. Clerk.

[Filed, Dec. 5, 1946. Charles E. Stewart, Clerk.]

2¼% Treasury coupon bonds—1959–1962 $10,000.00 each, numbered: 5838 J, 5839 K, 5840 L, 5841 A, 5842 B, 5843 C, 5844 D, 5845 E, 5846 F, 5847 H, 21425 E, 21426 F, 21427 H, 21428 J, 21429 K, 60194 D, 60195 E, 60196 F, 60197 H, 60198 J, 60199 K, 60200 L, 60201 A, 60202 B, 60203 C, 60204 D, 60205 E, 60206 F, 60207 H, 60208 J, 60209 K, 60210 L, 60211 A, 60212 B, 60213 C, 60214 D, 60215 E, 60216 F, 60217 H, 60218 J, 60219 K, 60220 L, 60221 A, 60222 B, 60223 C, 60224 D, 60225 E, 60226 F, 60227 H, 60228 J, 78178 J, 78179 K, 78180 L, 78181 A, 78182 B, 78183 C, 78184 D, 78185 E, 78186 F, 78187 H, 78188 J, 78189 K, 78190 L, 78191 A, 78192 B, 78193 C, 78194 D, 78195 E, 78196 F, 78197 H, 78198 J, 78199 K, 78200 L, 78201 A, 78202 B, 78203 C, 78204 D, 78205 E, 78206 F, 78207 H, 78208 J, 78209 K, 78210 L, 78211 A, 78212 B, 78213 C, 78214 D, 73215 E, 78216 F, 78217 H.

2¼% Treasury coupon bonds—1956–1959 $10,000.00 each, numbered: 27243 C, 27244 D, 27245 E, 27246 F, 27247 H, 27248 J, 27249 K, 27250 L, 27251 A, 27252 B, 27253 C, 27254 D, 27255 E, 27256 F, 27257 H, 27258 J, 27259 K, 27260 L, 27261 A, 27262 B.

2¼% Treasury coupon bonds—1959–1962 $100,000.00 each, numbered: 1302 B.

2¼% Treasury coupon bonds—1956–1959 $100,000.00 each, numbered: 18920 L, 18921 A, 25809 K, 25810 L.

Total page 1	$1,600,000.00
Total page 2	1,900,000.00
Grand Total:	3,500,000.00

(pencil note) Dec. 6, 1946.

The above bonds received for deposit in C. A. No. 37764.

CHAS. E. STEWART,
Clerk.

By H. M. HULL,
Dep. Clerk.

[Filed Dec. 5, 1946. Charles E. Stewart, Clerk.]

CONSTITUTION OF THE INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, WASHINGTON, D. C.

Adopted at Cincinnati, Ohio, September 19, 1944

[Filed Dec. 5, 1946. Charles E. Stewart, Clerk]

CONSTITUTION OF INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, WASHINGTON, D. C.

Adopted at Cincinnati, Ohio on September 19, 1944, Effective October 1, 1944

PREAMBLE

There is no truth more obvious than that without coal there could not have been such marvelous social and industrial progress as marks present day civilization.

Believing that those whose lot it is to toil within the earth's recesses surrounded by peculiar dangers and deprived of sunlight and pure air, producing the commodity which makes possible the world's progress, are entitled to protection and an equitable share of the fruits of their labor, we have formed the "United Mine Workers of America" for the purpose of establishing, by lawful means, the principles embraced in the body of this Constitution.

CONSTITUTION

ARTICLE I

Name

This organization shall be known as the United Mine Workers of America. It shall be International in scope, and as an organization shall not be committed to or favor any particular religious creed; neither shall affiliation herewith interfere with the religious or political freedom of individual members.

ARTICLE II

Objects

First. To unite in one organization, regardless of creed, color or nationality, all workers eligible for membership employed in and around coal mines, coal washeries, coal processing plants, coke ovens, and in such other industries as may be designated and approved by the International Executive Board, on the American continent.

Second. To increase the wages, and improve the conditions of employment of our members by legislation, conciliation, joint agreements or strikes.

Third. To demand that not more than six hours from bank to bank in each twenty-four hours and not more than five days per week shall be worked by members of our organization.

Fourth. To strive for a minimum wage scale for all members of our union.

Fifth. To provide for the education of our children by lawfully prohibiting their employment until they have at least reached eighteen years of age.

Sixth. To secure equitable statutory old-age pensions, workmen's compensation and unemployment insurance laws.

Seventh. To enforce existing just laws and to secure the repeal of those which are unjust.

Eighth. To secure by legislative enactment, laws protecting the limbs, lives and health of our members; establishing our right to organize; prohibiting the use of deception to secure strike breakers; preventing the employment of privately armed guards during labor disputes; and such other legislation as will be beneficial to the members of our craft.

ARTICLE III

Jurisdiction

Section 1. The International Union shall be composed of workers eligible for membership in the United Mine Workers of America, and may be divided into Districts, Sub-Districts and Local Unions. The International Union shall have supreme legislative, executive and judicial authority over all members and subordinate branches, and shall be the ultimate tribunal to which all matters of importance to the welfare of the membership and subordinate branches shall be referred for adjustment. Between International Conventions the supreme executive and judicial powers of the International Union shall be vested in its Executive officers and Executive Board in accordance with and subject to the provisions of this Constitution.

Sec. 2. All Districts, Sub-Districts and Local Unions must be chartered by, and shall be under the jurisdiction of and subject to the laws of the International Union and rulings of the International Executive Board. Charters of Districts, Sub-Districts and Local Unions may be revoked by the International President, who shall have authority to create a provisional government for the subordinate branch whose charter has been revoked. This action of the International President shall be subject to review by the International Executive Board upon appeal by any officers deposed or any members affected thereby. Until such review is had and unless said order of revocation is set aside, all members, officers and branches within the territory affected by the order of revocation shall respect and conform to said order. An appeal may be had from the decision of the Executive Board upon such order of revocation, to the next International Convention.

Sec. 3. In all questions of dispute, appeals and grievances (unless restricted by joint agreement) the right of appeal of an individual member shall end with the District Executive Board, and the right of appeal of any branch of the organization shall end with the International Executive Board. This shall not prevent individuals whose membership is at stake from appealing to the International Executive Board, which body's decision shall be final and binding until reversed by the International Convention. When an appeal is taken, the defendants must be furnished a copy of the appeal in ample time to prepare their case. In all cases the decision of the subordinate tribunal must be complied with before the appellant's right of appeal shall be recognized. However, the appellant shall have the right of appeal, provided bond satisfactory to the court of appeal covering the amount of money involved is furnished.

Sec. 4. In all cases of appeals to or trial of charges by the International Executive Board, to insure a speedy hearing and promote the convenience of the parties and membership affected, the Executive Board, if in session, or the International President if the Executive Board be not in session, may at its or his discretion, designate a committee of the International Executive Board, who shall proceed to the locality or localities where a majority of the parties and witnesses are located and proceed to hear evidence upon such charges or appeal.

Said committee shall make a report of the evidence heard, together with its preliminary findings of facts thereon, which shall be submitted to the International Executive Board for action thereon. The parties to such appeal or charges shall have reasonable notice of the times and places of the hearings by such committee, and shall have the right to appear before and be heard by the International Executive Board at the time of its disposition of the case.

ARTICLE IV

Districts

SECTION 1. Districts may be formed with such numbers and territory as may be designated by the International Officers and may adopt such laws for their government as do not conflict with the laws or rulings of the International Union or Joint Agreements.

SEC. 2. The International Executive Board shall have authority to change the boundaries of Districts as conditions may require; but the boundaries of self-supporting Districts shall not be changed except by a vote of the membership affected, as determined by the District, the referendum to be taken by the officers of the District affected and representatives of the International Union. All Local Unions must pay all taxes and assessments due the District to which they were attached before the change of boundary was made.

ARTICLE V

Subdistricts

Subdistricts may be formed and assigned such numbers and territory as may be designated by the District of which they are a part, subject to the approval of the International Executive Board; and such Subdistricts may, after being duly chartered, adopt such laws for their government as do not conflict with the laws and rulings of the International or District Unions or joint agreements.

ARTICLE VI

Local Unions

SECTION 1. Local Unions may adopt such laws for their government as do not conflict with the laws or rulings of the International, District or Subdistrict Unions or Joint Agreements.

SEC. 2. Each Local Union shall have the right to penalize its own members, or (except as prohibited by Section 17 of Article XV) debar from membership any applicant for membership therein, but any member so penalized or any person so debarred shall have the right of appeal in consecutive order to the Subdistrict, District and International Unions, any one of which branches shall have authority to reverse the decision of the Local Union; and any Local Union debarring any applicant from membership shall give such applicant written reason for his debarment.

SEC. 3. If in the judgment of the officers of the International, District or Sub-District Unions, any Local Union has taken any action opposed to the interests of the United Mine Workers, the International Union or the District or Sub-District Unions having jurisdiction over the Local Union shall have the right to reverse the action of the Local Union.

SEC. 4. Should any Local Union be dissatisfied with the decision of any of the governing branches (unless prohibited by joint agreement) it shall have the right of appeal to the branch next in authority until a final decision is reached, as provided in Section 3 of Article III.

SEC. 5. Where it is decided that any branch of the Organization has done an injustice to any member, or applicant for membership, the branch responsible for the injustice must compensate such member or applicant for time lost and expense incurred while defending his rights, and any such defendant shall be restored to all former rights and privileges in the Organization.

ARTICLE VII

Officers

The officers of the International Union shall be one President, one Vice-President, one Secretary-Treasurer, three Tellers, three Auditors, and one Executive Board Member from each of the Districts over which the United Mine Workers has jurisdiction, the last named of which shall constitute the International Executive Board.

ARTICLE VIII

Qualification for office

SECTION 1. Any member in good standing in the Organization who is a citizen of the United States or Canada, or who has legally declared his intention of becoming a citizen of the United States or Canada, shall be eligible to hold office in the International Union if employed at our trade, or officially connected with the Organization or engaged as permitted by Section 2 of Article XXI and Section 1 of Article II, and has never been found guilty of misappropriating any of the Organization's funds, and has had five years' experience as a mine worker and has been a member for three consecutive years at the time of his nomination and election, and except as may be hereinafter provided.

SEC. 2. No two Auditors shall be elected from the same District. In the event of any two candidates for Auditor from the same District receiving a plurality of votes cast, the one receiving the lesser number shall drop out and the candidate from some other District receiving the next highest number of votes shall be declared elected. This rule shall also apply to the election of Tellers.

SEC. 3. No member shall hold two salaried offices in the International Union at the same time, neither shall any member hold a salaried office in any two branches of the Organization at the same time.

SEC. 4. Section 1 of this Article shall not prohibit newly organized districts from having representation on the International Executive Board.

ARTICLE IX

Duty of officers

SECTION 1. The President may preside over all International Conventions and Meetings of the International Executive Board and sign all bills and official documents when satisfied of their correctness.

SEC. 2. He shall fill by appointment all vacancies occurring in any International Office, except International Board Members, who shall be elected by the District in which the vacancy occurs.

SEC. 3. He may suspend or remove any International Officer or appointed employee for insubordination or just and sufficient cause.

SEC. 4. He may appoint a member whose duty shall be to collect and compile statistics on the production, distribution, and consumption of coal and coke, freight rates, market conditions, and any other matter that may be of benefit to the Organization. Said statistician shall make a report to the regular convention.

SEC. 5. He may appoint such organizers, field and office workers as may in his judgment be necessary to conduct the affairs of the International Union.

SEC. 6. He may visit in person or appoint an International Officer to visit any branch of the U. M. W. of A., or any other place, if in his judgment such visit will be of benefit to the U. M. W. of A.

SEC. 7. He shall interpret the meaning of the International Constitution but his interpretation shall be subject to repeal by the International Executive Board. Between sessions of the International Executive Board he shall have full power to direct the workings of the Organization and shall report his acts to the International Executive Board for its approval.

SEC. 8. He shall semi-annually name the pass word, transmit it to the International Secretary-Treasurer, who in turn shall transmit it to the various District Secretary-Treasurers for transmission to the Local Unions entitled to the same.

SEC. 9. He shall appoint from among properly elected delegates the committees necessary to transact the work of International Conventions, and instruct the Resolutions, Constitution, and Grievance Committees to meet at headquarters sufficiently early to enable them to be prepared to render at least a partial report on the first day the Convention convenes, but if a Convention is to consider charges regularly filed, against the President, the Grievance Committee shall be elected by the Convention.

SEC. 10. He shall appoint, subject to the approval of the International Executive Board, one or more competent Traveling Auditors, said appointees to be agreed upon by the Districts and International Union. Said Traveling Auditors shall examine the accounts of all Local Unions at least once every year and assist in establishing a uniform system of bookkeeping in the Local Unions. Should such audits develop any irregularities, those responsible for the same shall be penalized as hereinafter provided. The Traveling Auditors so appointed shall submit a correct report of their findings to the International, District and Sub-District officers, and shall also furnish a

copy of their report to the Local Unions where the accounts have been audited. This section shall not prevent proper International Officers from at any time examining the accounts and records of any Local Union.

SEC. 11. He shall be empowered to grant district or territorial dispensations relating to initiation fees, dues and assessments, when in his judgment such dispensations will add to the growth of or conserve the interests of the Organization.

SEC. 12. He shall devote all his time to the affairs of the Organization, executing the instructions of the International Executive Board and exercising general supervision over the field and office work of the International Union.

SEC. 13. All appointments, suspensions and removals from office done by the President shall be subject to the approval of the International Executive Board.

SEC. 14. The Vice President shall work under the instructions of the President and the International Executive Board, and in the event the presidency is vacated by resignation or removal from office, he shall succeed to that position.

SEC. 15. The Secretary-Treasurer shall have charge of and preserve all books, documents and effects of the International office except such records as properly belong to the office of the President. The Seal shall remain in the form and design heretofore used, containing the words "United Mine Workers of America. Organized January 25, 1890. One and Indissoluble." It shall be held by the Secretary-Treasurer in trust for the use of the membership in their organization affairs; and he shall prosecute any and all proceedings proper to prevent the wrongful use or imitation of the Seal or of the name of the Organization.

SEC. 16. He shall record, or cause to be recorded, the proceedings of all International Conventions and such meetings of the International Executive Board as the Board may desire recorded.

SEC. 17. He shall receive and receipt for all moneys due the International Union, pay all bills and current expenses, unless otherwise ordered by the President, and shall keep copies of all important correspondence sent out and received by his office.

SEC. 18. He shall submit to the Locals semi-annually a statement showing the salary and expenses of each officer and employe and detailing the receipt and disbursement of all money belonging to the International Union. The receipts from each District shall be compiled separately and totaled.

SEC. 19. He shall give a bond of $25,000 (which must be approved by the International Executive Board and deposited with the President) to insure a faithful discharge of his duties, but he shall not have subject to his order at any time more than such sums as may be designated by the International Executive Board as necessary to the efficient management of his office and the affairs of the Union.

SEC. 20. He must deposit all funds in excess of sums designated by the International Executive Board in banks, if any, giving interest-bearing certificates of deposit, subject to the order of the International Executive Board.

SEC. 21. He shall send out to all Local Unions a monthly "delinquent list," showing all Local Unions in bad standing with the International Union.

SEC. 22. He may, with the consent of the International Executive Board, employ such assistants as may be necessary to conduct the affairs of his office.

SEC. 23. He shall perform such other duties as are elsewhere herein provided and may be assigned him by the President or International Executive Board.

SEC. 24. The President, Vice President and Secretary-Treasurer shall prepare a joint report which shall be rendered to the regular International Convention.

SEC. 25. The International Executive Board shall execute the instructions of International Conventions and between Conventions shall have full power to direct the workings of the Organization.

SEC. 26. The Board shall hold in trust for the United Mine Workers of America all monies deposited by the Secretary-Treasurer in the name of the Executive Board, but under no circumstances shall said money be drawn upon except upon the written order of two-thirds of the members of the Board. Real estate owned or acquired by the International Union, or reverting to it under the provisions of this Constitution, shall be held in the name of the International President Vice President and Secretary-Treasurer, and their successors in office, as trustees for the United Mine Workers of America.

SEC. 27. The Board shall have power between Conventions, by a two-thirds vote, to recommend the calling of a general strike, but under no circumstances shall it call such a strike until approved by a referendum vote of the members.

SEC. 28. Questions coming before the Board may be decided by a unit vote of its members, but any member may demand a roll call vote on any question, and each member shall have one vote, and one additional vote for each 2,000 members, or majority fraction thereof, in good standing, he represents. Where a unit vote is taken the three resident officers shall be entitled to vote. Where a roll call vote is taken they shall not have that right unless a tie vote is cast; then the President shall cast the deciding vote.

SEC. 29. The President, Vice President, and Secretary-Treaurer shall be members of the Board by virtue of their positions.

SEC. 30. The Board shall be convened upon the order of the President, or by the Secretary-Treasurer, at the request of a majority of the members thereof.

SEC. 31. When the Board is not in session, the individual members thereof shall be subject to the direction of the President.

SEC. 32. The Auditors shall audit the books and accounts of the International Secretary-Treasurer semiannually and make a report of the receipts and disbursements of his office, and the Secretary-Treasurer shall have their report printed and a copy sent to each Local Union.

SEC. 33. The auditors shall also act as the Credential Committee for International Conventions and shall meet at headquarters in sufficient time to enable them to make complete, printed reports in the morning

of the first day's session of the Convention, of their audit and of all delegates entitled to seats in the Convention, said reports being printed in sufficient numbers to furnish each delegate with copies.

SEC. 34. The names of delegates whose seats are in contest shall be withheld from the Committee's report until the contest is decided.

SEC. 35. The Tellers shall meet at headquarters and tabulate, in accordance with the provisions of this Constitution, the votes cast for International Officers by Local Unions that have complied with the valid laws of all branches of the Organization.

The Tellers shall also meet at headquarters and open and tabulate the nomination returns and file their report with the Secretary-Treasurer so that he may send out notifications, as required by Section 6, Article XI. In arranging the ballot, the Secretary-Treasurer shall place the names of the different candidates on the ballot in graduated order, in accordance with the number of nominations received.

SEC. 36. The votes of each District shall be tabulated separately and consecutively, and the votes of each Local Union within each District shall be tabulated separately and consecutively, the entire totals given and the complete report printed and sent out to the Local Unions by the International Tellers not later than January 15th of each election year.

SEC. 37. The Tellers shall decide the legality of the vote of any Local Union and their report submitted to the Local Unions shall be an official announcement of the election to the respective offices of the candidates receiving a plurality of legal votes as shown on the report, but should they for any reason refuse to tabulate the vote of any Local, their reason must in every instance be shown on their report submitted to the Local Unions, and all contests growing out of the report shall be filed with the International Executive Board, which body shall have authority to decide the contest.

SEC. 38. The President, Vice President, and Secretary-Treasurer shall have their report prepared, printed, and ready for distribution on the first day the Convention convenes.

ARTICLE X

Officers' salaries

SECTION 1. The salary of the President shall be $25,000 per annum; Vice-President, $18,000 per annum; Secretary-Treasurer, $18,000 per annum; Editor of the Official Journal, $7,000 per annum; International Executive Board Members, $500 per month; Tellers and Auditors, $12.50 per day when employed. Each of the above-mentioned officers and editor shall receive, in addition to their salaries, such additional sums for additional service rendered as may be authorized and approved by the President; together with all legitimate expenses when employed by the Organization away from their places of residence.

SEC. 2. The salaries of other employees shall be fixed by the International Executive Board.

ARTICLE XI

Nomination and election of officers

SECTION 1. The President, Vice-President, Secretary-Treasurer, Auditors and Tellers shall be elected by a referendum vote of the members, except as elsewhere herein provided, the candidates for the respective positions receiving a plurality of legal votes cast shall be declared elected, except as restricted by Sections 1 and 2 of Article VIII.

SEC. 2. The next election of the International Officers shall be held on the second Tuesday in December 1944, and every four years thereafter; and the officers elected shall assume their duties beginning April 1st, following their election, and shall serve for a term of four years thereafter.

NOTE.—District officers, when elected, shall serve for a term of four years following their election.

SEC. 3. All members in good standing in all branches of the Organization for at least three months prior to and including December 1st of each election year shall be entitled to vote.

SEC. 4. Each District and Sub-District Secretary-Treasurer must forward by registered mail to the International Tellers, care of the International Secretary-Treasurer, not later than December 15th of each election year, a statement giving the numbers of all Local Unions in bad standing with their respective branches, also giving the reason for the Locals being in such status. If it is claimed a violation of a District or Sub-District Constitution is responsible for the Local's delinquency, the section alleged to have been violated must be quoted in the statement to the Tellers. In the event the Tellers do not receive such a statement, they shall assume the Locals are in good standing with their District and Sub-District Organizations.

SEC. 5. The International Secretary-Treasurer shall prepare nomination blanks and send them to the Local Unions not later than twenty weeks before the date of election and the Local Recording Secretary shall fill in the names of the members nominated by the Local Union for the various offices and forward the same to reach the International Secretary-Treasurer's office not later than fifteen weeks before the date of election.

SEC. 6. The International Secretary-Treasurer shall within ten days thereafter notify all members who have been nominated and ask if they are candidates, but no person shall be notified or be a candidate who has not been nominated by five or more Local Unions.

SEC. 7. Any nominee notified in accordance with Section 6 of this Article who desires to become a candidate must have his official notice attested by the officers of his Local Union and return said notice to the International Secretary-Treasurer at once.

SEC. 8. No nominee filing his acceptance with the International Secretary-Treasurer shall be allowed to withdraw his name.

SEC. 9. The International Secretary-Treasurer shall prepare ballots giving the names and places of residence of those accepting nominations, also showing the positions for which the various nominees are candidates, and forward them to the Local Unions in sufficient num-

bers to supply each member not later than four weeks prior to the date of election. Two "Tally Sheets," one "Return Sheet," and one envelope for "Return Sheet" must accompany the ballot sent each Local Union.

SEC. 10. Local Recording Secretaries must notify their members by posting notices and otherwise, one week prior to the dates set for the nomination and election of International Officers.

SEC. 11. Each Local Union shall designate, at a regular meeting of the Local, where its election shall be held, and the place so designated shall be the official voting place of such Local Union, and under no circumstances shall the votes of any Local be tabulated in any place other than the place designated by the Local Union, and no member shall be allowed to interfere with the official Tellers during the tabulation.

SEC. 12. No member shall be allowed more than one vote for any candidate, nor shall the Local Tellers record the vote of any member who is not present at the time the election is held, except Officers, Organizers and Workers in the field away from home, whose votes shall be recorded if sent to the Secretaries of their respective Local Unions.

SEC. 13. Each Local Union shall elect from among its members a committee of not less than three nor more than six, three of whom must be the Local President, Financial and Recording Secretaries, to act as Local Tellers, whose duty shall be to supervise the election, and when requested, instruct the members how to vote, and tabulate the votes cast by the members for International Offices, and enter on the "Return Sheet" furnished by the International Secretary-Treasurer for that purpose the total number of votes cast for each candidate. The correctness of the "Return Sheet" must be attested with the Local seal and signatures of the President and Recording Secretary of the Local Union.

SEC. 14. Should it be proven that more votes are recorded on the "Return Sheet" than were actually cast by the members, the entire vote of the Local Union shall be thrown out by the International Tellers, and those responsible for the fraud shall be punished as hereinafter provided.

SEC. 15. After the votes have been tabulated and the "Return Sheet" attested, it shall be turned over to the Recording Secretary, whose duty it shall be to see that the "Return Sheet" is properly attested, enclosed in a special envelope furnished by the International Secretary-Treasurer for that purpose, and forwarded at once by registered mail to the International Secretary-Treasurer's office. "Return Sheets" reaching International Headquarters after January 1st shall not be tabulated by the International Tellers.

SEC. 16. The envelopes for "Return Sheets" furnished the Local Unions must have the name and address of the International Secretary-Treasurer, and the following printed thereon:

Election Returns
From L. U. No. _____
District No. _____

It shall be the duty of the Local Recording Secretary to insert the numbers of the Local Union and District in the blank spaces on the envelope.

SEC. 17. When the "Return Sheets" reach the International Secretary-Treasurer's office, he shall examine the envelopes to see if they are intact, make a proper record of their receipt, and deposit them unopened in a securely locked receptacle provided for that purpose.

SEC. 18. Before turning the "Return Sheets" over to the International Tellers, the Secretary-Treasurer, with the Tellers, must check them with the record made upon their receipt, and the Secretary-Treasurer shall take the Tellers' receipt for all "Return Sheets" turned over to them.

SEC. 19. The International Secretary-Treasurer shall be absolute custodian of the "Return Sheets" from the time they reach his office until turned over to the International Tellers and during the interims of tabulation.

SEC. 20. No member who is not a regular attendant of the meetings of his Local Union shall be allowed to act as a Local Teller of International elections.

Note: The term "regular attendant" shall mean a member who attends at least one-half of the meetings of his Local Union each month for six months just previous to the nomination.

SEC. 21. The International Tellers shall not count the votes of any Local Union that has cast more votes than the number of members such Local paid per capita tax on to the National Union for the month preceding the one in which the election is held unless a satisfactory explanation for so doing accompanies the "Return Sheet" of the Local Union so voting. Neither shall they count the votes of any Local Union that is not in good standing with all branches of the Organization or whose "Return Sheet" is not attested as required by Section 13 of this Article.

SEC. 22. All contests in connection with the vote of any Local Union must be filed with the International Tellers not later than ten days after the date of election, by some responsible and reputable member of the Local Union whose vote is contested.

SEC. 23. In case no plurality vote is cast for any of the candidates for some office, another election shall be held for that particular office.

SEC. 24. Local Officers of all Local Unions shall be required to carefully preserve all ballots which have been cast for International Officers by their respective Local Unions for a period of six months after the date of election.

SEC. 25. No member other than the Local Tellers shall be allowed to loiter around the voting place or to interfere in any way with the election of any Local Union.

SEC. 26. Local Tellers shall be held personally responsible for any irregularities that may take place in their Local Unions during the election of International Officers.

SEC. 27. That portion of Section 6 which requires candidates to have at least five nominations shall not apply to International Board Members.

SEC. 28. Any Local Officer or Teller failing to obey the laws regulating International elections, or any member or members interfering

with Local Officers or Tellers during the discharge of their duties in connection with International elections, or any member or members resorting to dishonest or questionable practices to secure the election or defeat of any candidate for International office shall be tried by the International Executive Board and fined, suspended, or expelled, as the magnitude of the transgression may warrant.

SEC. 29. Upon the signed request of 5 percent of the entire membership, the Secretary-Treasurer shall send out a petition to each Local Union for the recall of any International Officer guilty of malfeasance. Said petition to accompany charges for which a recall is asked and defense of those charged.

If within thirty days after the petition is sent out 30 percent of the entire membership send a signed request to the Secretary-Treasurer, the International Executive Board shall call an election for the recall of any International Officer so charged.

Said election to be held in accordance with the election laws of the International Union.

SEC. 30. It shall be the imperative duty of the election tellers to make a complete report of the election at the first meeting of their Local Union following the election, and it shall be further the duty of the recording secretary to make a complete record of same in the minutes of said meetings. Tellers or secretaries failing to comply with this section shall, upon conviction, be removed from office.

ARTICLE XII

Conventions

SECTION 1. The next International Scale and Policy Convention shall be held on the first Tuesday in October, 1946, and the next International Constitutional Convention shall be held on the first Tuesday in October, 1948, at such places as may be determined by the next preceding Convention; provided, however, that the dates and places of holding such Conventions may, upon good cause, be advanced, postponed, or changed by resolution to that effect duly adopted by the International Executive Board.

SEC. 2. Representatives to the International Convention shall be elected directly from Local Unions they represent, and shall have one vote for one hundred members or less, and one additional vote for each one hundred members or majority fraction thereof, but no delegate shall have more than five votes.

SEC. 3. Representation shall be based upon the average membership of the Local for the last three months upon which payment has been made, previous to the month in which the Convention is held.

SEC. 4. Local Unions organized one year prior to the date for holding the Convention and having one hundred members or more in good standing, must be represented in the Convention or pay to the International Secretary-Treasurer a fine of $25.00 for each one hundred members in good standing in the Local Union, unless exonerated by the International Executive Board. This section shall not apply to Local Unions whose members have been idle for one month or more prior to the Convention on account of strikes, suspensions, or closing of mines.

SEC. 5. Local Unions of less than one hundred members may combine with similar Local Unions within a reasonable radius of one another in the same District, and elect delegates to represent them, but no delegates so elected shall be entitled to more than five votes in the Convention.

SEC. 6. No Local Union shall be entitled to representation that is in arrears for per capita tax or assessment for two months preceding the month in which the Convention is held and which has not in every particular complied with the constitutions of the International Union and of the District and Sub-District to which it is attached.

SEC. 7. Any Local Union becoming delinquent must comply with Section 18 of Article XIV and be in good standing for four months previous to the month in which the Convention is held, before it will be entitled to representation.

SEC. 8. All newly organized Locals must be organized at least three months and have two months' per capita tax and all assessments paid prior to the month in which the Convention is held, before they will be entitled to representation, unless said new Locals are composed of members from old Locals in good standing at the time the new Local was organized. The fact that a new Local is composed of old members must be attested by the District Secretary.

SEC. 9. No person who is not a bona fide member of a Local Union employed in or around a coal mine, coal washery, coal processing plant or coke oven, or such other industries as may be designated and approved by the International Executive Board, or by the Organization, or who is not a regular attendant of the meetings of his Local Union shall be eligible to act as a delegate. This section shall not apply to International, District or Sub-District Officers.

Note: The term "regular attendant" shall mean a member who attends at least one-half of the meetings of his Local Union each month for six months just previous to the nomination of delegates. If transferred members can show they attended the required number of meetings of the Local Union from which they transfer, Section 9 will not prevent their representing the Local Union to which they transfer.

SEC. 10. No appointed employee of the Organization shall be a delegate from any Local Union other than his own.

SEC. 11. Any member accepting a position other than that of a mine worker shall not be eligible to act as a delegate to any Sub-District, District or International Convention, while holding such position, but accepting a position with the United Mine Workers or any other affiliated Organization shall not be construed as making a member ineligible to act as such.

SEC. 12. The International Secretary-Treasurer shall furnish the Local Unions with credential blanks in duplicate, which must be attested as required on the blanks. The duplicate shall be retained by the delegate and the original forwarded to the International Secretary-Treasurer, and no credentials shall be accepted later than fifteen days prior to the date for convening the Convention.

SEC. 13. The Credential Committee shall not transfer votes to any delegate unless authorized by the Local Union to do so.

SEC. 14. Delegates to International Conventions must be elected at official meetings of Local Unions after the call for the Convention

is received and has been read to the Local Union. The Local Recording Secretary shall post notices, signed by himself and the Local President, at the mine at least three days prior to such meetings, stating that delegates are to be elected on a certain day. Delegates must receive a majority vote of the members present at such meeting, and no meeting other than the one first advertised and called in accordance herewith shall be recognized as an official meeting for the election of delegates.

SEC. 15. Local Officers failing to read the call for a Convention to their Local Union and to post notices in accordance with Section 14 of this Article, shall upon conviction be removed from office, and shall not thereafter be allowed to hold office in the Organization for a period of two years.

SEC. 16. When any delegate's credential is to be contested notice of such contest shall be sent to the International Secretary-Treasurer not later than ten days prior to the date for convening the Convention; but any delegate whose credential is contested may be unseated at any time during the Convention.

SEC. 17. All resolutions, grievances and constitutional amendments to be considered by the Convention, shall be sent to the International Secretary-Treasurer not less than ten days prior to the date set for the Convention, who will sort and distribute them among the chairmen of the various and proper committees.

SEC. 18. Resolutions bearing on different subjects should be written on separate papers.

SEC. 19. International Conventions shall not consider internal appeals or grievances unless they have been previously considered by the lower tribunals of the Organization.

SEC. 20. The International Organization shall pay the transportation of delegates to and from International Conventions on the following basis: Local Unions of from ten to five hundred members shall be entitled to transportation for one delegate and one additional delegate for each additional five hundred members or fraction thereof, provided such fraction is not less than fifty-one members. Where Local Unions combine, as provided in Section 5, they shall be entitled to transportation for one delegate for each five hundred members or fraction thereof, provided such fraction is not less than fifty-one members. Where railroad certificates cannot be secured by delegates, they shall furnish receipts for fare paid.

SEC. 21. On questions coming before the Convention a roll call vote shall be taken upon a request of thirty (30) percent of the delegates. The Secretary-Treasurer shall have a roll of accredited delegates prepared and make such other arrangements as will expedite and facilitate the calling of the roll.

ARTICLE XIII

Special conventions

SECTION 1. Special International Conventions shall be called by the President when so instructed by the International Executive Board, or upon the request of five or more Districts.

SEC. 2. Representation in and transportation to and from Special Conventions shall be upon the same basis as govern regular Conventions.

SEC. 3. Districts demanding a Special Convention must state the reason or reasons why such Convention is desired, and it shall be the duty of the President to state said reason or reasons in the Call for the Convention.

SEC. 4. Special Conventions shall not have authority to consider any matter other than that which is specifically stated in the Call for the Convention.

ARTICLE XIV

Local unions, how formed and governed

SECTION 1. Local Unions shall be composed of ten or more workers, skilled and unskilled, working in or around coal mines, coal washeries, coal processing plants, coke ovens, or in other industries designated and approved by the International Executive Board, but seven members shall be a quorum for a Local Union.

SEC. 2. No applicant for membership in the United Mine Workers of America shall be regarded as being a member in good standing until the full amount of his initiation fee has been paid or a check-off order authorizing the collection of the same has been filed in or through the Local Union where application for membership is made, and the obligation has been administered, except in case the applicant has religious scruples against taking the obligation. In such case the obligation shall be waived, providing the applicant gives notice of his objections to taking the obligation at the time his application for membership is filed. In all cases applicants for membership must pay dues and assessments for the month during which they start to work.

Operators' commissioners, persons engaged in the sale of intoxicating liquors and members of the Civic Federation shall not be eligible for membership. The International Executive Board may, in its discretion, provide rules and regulations upon which supervisory and other employees may be admitted to membership.

Any member accepting membership in the Industrial Workers of the World, the Working Class Union, the One Big Union, or any other dual organization, or membership in the National Chamber of Commerce, or the Ku Klux Klan, or the Communist Party, or Fascist, Nazi or Bund organizations, shall be expelled from the United Mine Workers of America, and is permanently debarred from holding office in the United Mine Workers of America, and no members of any such organization shall be permitted to have membership in our Union unless they forfeit their membership in the dual organization immediately upon securing membership in the United Mine Workers of America. Any member of the United Mine Workers of America who accepts office in any dual organization shall be permanently expelled from the United Mine Workers of America, unless reinstated by the International Executive Board.

SEC. 3. No mine shall be under the jurisdiction of more than one Local Union; neither shall separate Locals be established for coal

washers or coke oven employees, unless there is no Local Union having jurisdiction over some adjacent coal mine to which they can belong. All members must immediately transfer to the Local Union having jurisdiction over the mine at which they are employed. The Local Union having jurisdiction over the mine at which a member is employed shall be responsible for the payment of sick, accident and death benefit claims.

SEC. 4. The charter fee for Local Unions organized by salaried officers or organizers of the International, District, or Subdistrict Unions shall be $20, which shall entitle the Local organized to one charter, one press seal, one ledger, one record book, one book of orders on treasury, one Treasurer's receipt book, fifty International Constitutions, fifty due cards, one manual, one gavel, one copy of the proceedings of the last International Convention and such other documents as the International Secretary-Treasurer may desire to send them.

SEC. 5. The charter fee for Local Unions organized by Local organizers shall be $27, $7 of which may be retained by the Local Organizer and the remaining $20 of which must be sent to the International Secretary-Treasurer.

SEC. 6. When a Local Union is organized the Organizer must send a report and the charter fee to the International Secretary-Treasurer within 1 week or show valid cause for the delay.

SEC. 7. Unless a dispensation has been granted in accordance with Section 11 of Article IX, the initiation fee for practical miners shall be $10; inexperienced miners and top and bottom men shall be subject to the laws of the District where application for membership is made, but no applicant shall be eligible for initiation until he has started to work at a mine under the jurisdiction of the Local Union where application for membership is made.

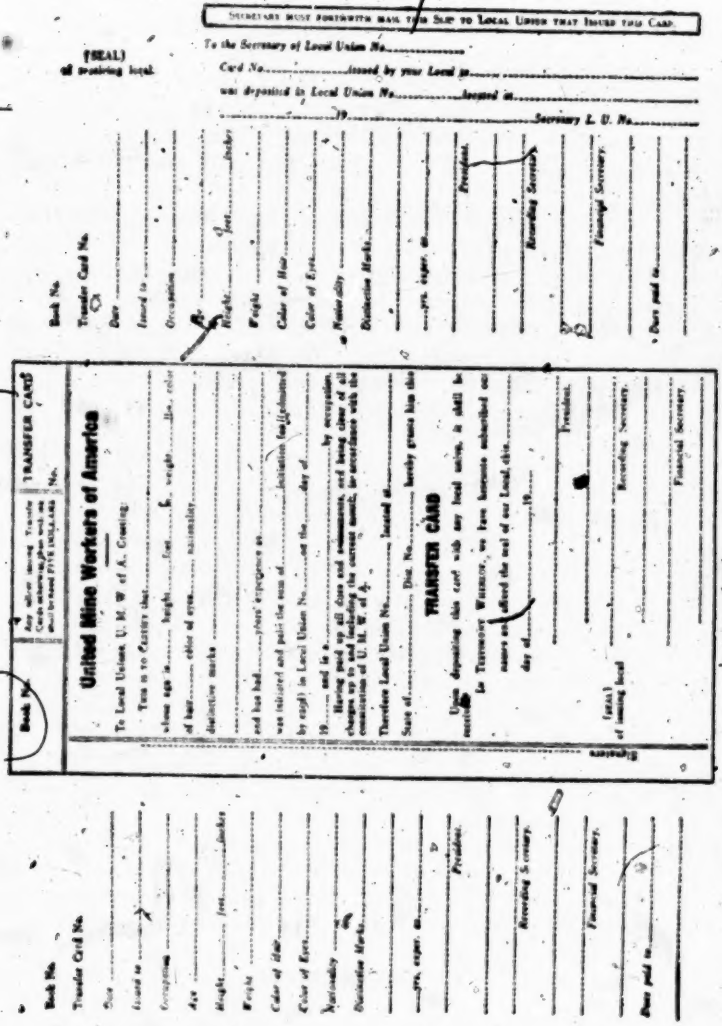
Applicants for membership must pay the full amount of the initiation fee into the Local where application is first made; the full amount to be paid within 3 months or the first payment shall be forfeited.

SEC. 8. Members' sons between 16 and 21 years of age shall be admitted free of charge.

SEC. 9. Any member wishing to attend school as a pupil shall be granted leave of absence by his Local Union, and on returning to work in the mine shall be admitted to membership without the payment of initiation fee.

SEC. 10. Any member going to work in a nonunion mine shall forfeit his membership and can be reinstated only by complying with the laws relating to such offense in the District where said offense is committed, unless such work is done with the consent of the President of the District where the nonunion mine is located.

SEC. 11. Any member becoming 3 months in arrears for dues or assessments, unless officially exonerated from the payment of same, shall forfeit his membership and can be reinstated only by paying an initiation fee and such other penalties as may be imposed by the District in which application for membership is made.


SECRETARY MUST FORTHWITH MAIL THIS SLIP TO LOCAL UNION THAT ISSUED THIS CARD.

To the Secretary of Local Union No.....

Card No.....issued by your Local in.....

was deposited in Local Union No.....located at.....

.....19.....Secretary L. U. No.....

(SEAL) of issuing local

Book No.

Transfer Card No.

Date.....

Issued to.....

Occupation.....

Age.....

Height.....feet.....inches

Weight.....

Color of Hair.....

Color of Eyes.....

Nationality.....

Distinctive Marks.....

.....yrs. expire on.....

President.

Recording Secretary.

Financial Secretary.

Dues paid to.....

TRANSFER CARD

No.

United Mine Workers of America

To Local Union, U. M. W. of A. Greeting:

This is to Certify that.....

whose age is.....height.....feet.....inches, weight.....lbs., color of hair.....color of eyes.....nationality.....

distinctive marks.....

and has had.....years experience as.....

was initiated and paid the sum of.....initiation fee, (supplemented by.....) in Local Union No.....on the.....day of.....

19.... and is a.....by occupation.

Having paid up all dues and assessments, and being clear of all indebtedness to the said Local Union, the undersigned, in accordance with the constitution of U. M. W. of A.

Therefore Local Union No.....located at.....

State of.....Dist. No.....hereby grants him this

TRANSFER CARD

Upon depositing this card with any local union, it shall be receipted by the Treasurer thereof, who will have hereunto subscribed our names and affixed the seal of our Local this.....day of.....19....

President.

Recording Secretary.

(SEAL) of issuing local

Financial Secretary.

(SEAL)

Signatures

Book No.

Transfer Card No.

Date.....

Issued to.....

Occupation.....

Age.....

Height.....feet.....inches

Weight.....

Color of Hair.....

Color of Eyes.....

Nationality.....

Distinctive Marks.....

.....yrs. expire on.....

President.

Recording Secretary.

Financial Secretary.

Dues paid to.....

FAC-SIMILE TRANSFER CARD.

Section 8, of Article XV, shall be printed on back of each Transfer Card.
The paper shall be of pink bond.
The seal of the International Union shall be printed on face with blue ink.

SEC. 12. The Local dues to be paid by each member, shall not be less than one dollar and fifty cents per month, together with such assessments as may be levied by the different branches of the Organization.

SEC. 13. Every Local Union shall pay direct or cause to be paid to the International Secretary-Treasurer a per capita tax of 90¢ per month per member and such additional assessments as may be levied by an International Convention or referendum vote of the members, payment of per capita tax to be based upon the amount of dues collected each month by the Local Union.

SEC. 14. Boys under eighteen years of age and decrepit or disabled members shall be known as half members and shall pay only half as much tax and assessment as full members.

SEC. 15. The Local Financial Secretary shall fill out and forward to the International and District Secretaries on or before the 25th of

each month, a report of all members in good standing in the Local Union the previous month, together with all tax and assessment due the International and District Organizations for the previous month.

SEC. 16. In filling out the monthly reports, the Local Financial Secretary must report to the International Secretary, on blanks furnished for that purpose, the amount of money paid and the number of members reported to the District, and to the District Secretary, the amount of money paid and the number of members reported to the International, and must sign a certificate showing the report is for the full number of members in good standing in the Local.

SEC. 17. When a Local Union has failed to report and pay as provided in Sections 15 and 16, by the end of the month, the International Secretary-Treasurer shall notify the Local President and Recording Secretary of the fact and failing to receive a satisfactory response within ten days thereafter, shall suspend the Local from membership and any Local so suspended shall be published on the delinquent list.

SEC. 18. Local Unions placed on the delinquent list shall not be reinstated until they have paid all arrearages and a fine of $2.00 for each one hundred members, or fraction thereof, in the Local Union.

SEC. 19. Should it be proven that any Local Financial Secretary has failed to report monthly the full membership of his Local to the International and District Secretaries and to send in the full amount of per capita tax on the same number of members that has paid dues to the Local Union, together with the full amount of assessment due the International and District Unions, the Local Union shall be suspended from all privileges and benefits until the deficiency is made good, and the officer responsible for such failure shall not be allowed to again hold office in the Organization for a period of two years.

SEC. 20. The word "member," as it appears in Section 13 of this Article, shall include all persons from whom dues are collected, whether they have taken the obligation or not.

SEC. 21. When a mine is abandoned indefinitely and all the members of the Local Union having jurisdiction over it have gone to work elsewhere, the Local Recording Secretary must notify the District Secretary of the fact and the District Secretary must make application to the International Secretary-Treasurer for exoneration for the Local Union for each month the mine is idle.

SEC. 22. In all cases, except as provided in Section 21, where Local Unions desire exoneration from the payment of per capita tax or assessments, the request for exoneration must be signed individually by the Local President and the Financial and Recording Secretaries, but no Local shall be exonerated until the request is approved by the District and International Secretaries.

SEC. 23. No Local Union shall be exonerated from the payment of per capita tax or assessments when the members have worked five days or more during said month; and it is understood that individual members of the Local Union who have not worked five days in any one month may be exonerated from the payment of dues and assessments by the Local Unions of which they are members, provided that such members are idle through no fault of their own. All individual members so exonerated must be reported to the International and

District organizations on the report required by Sections 15 and 16 of this Article.

SEC. 24. When exoneration is granted, the request must be renewed each month and shall be a legal substitute for the report required by Section 15 of this Article.

SEC. 25. No Local Union shall be allowed, for any reason or purpose, to divide its funds among its members or make donations to strikes unless said strikes have been endorsed by the Organization. Any Local using its funds for other than legitimate purposes shall be fined double the amount so used, the fine to be collected by the District and turned over to the International Secretary-Treasurer.

Any member receiving money from a Local Union for other than a legitimate purpose shall be suspended until double the amount received is returned. It shall be illegal to contribute funds for the promotion of the candidacy of any candidate for office within the Organization.

SEC. 26. If any mine or colliery is permanently abandoned, or should any Local Union for any cause disband, or should its charter be revoked, the charter and all monies, supplies and property, including real estate belonging thereto, shall be taken over by the International Union; provided, that any remaining members of such Local Union in good standing shall be given transfer cards.

SEC. 27. All Local Unions must contribute to and comply with the valid laws of Sub-Districts, where such are organized.

SEC. 28. All Local Unions shall set aside one meeting each month for the discussion of agreements and constitutions.

SEC. 29. Local Union supplies shall be furnished by the International Union for such prices as may be determined by the International Executive Board.

SEC. 30. Local Financial Secretaries shall, upon request, furnish each member with a Due Card with the amount of dues and assessments paid recorded thereon, which shall be the member's receipt for same.

SEC. 31. All Local Officers shall be elected the last meeting in June every alternate year by a majority vote of the members present, and shall serve for a period of two years, or until their successors are elected and qualified.

SEC. 32. The date of Local elections for Local Officers, Mine Committeemen and Checkweighmen must be generally advertised among the members. The Local Recording Secretary shall post notices at least one week previous to the date of election.

SEC. 33. No person shall be eligible to act as a Local officer or mine committeeman who has not been a member of the Local Union represented at least six months, or is not employed in or around a coal mine, coal washeries, or coke ovens, and in such other industries as may be designated and approved by the International Executive Board, or by the Organization, or who is not a regular attendant at the meetings of his Local Union.

NOTE.—The term "regular attendant" shall mean a member who attends at least one-half of the meetings of his Local Union each month for six months just previous to the nomination of officers.

SEC. 34. No person shall hold two offices in a Local Union at the same time. This section shall not apply to Mine Committeemen or Checkweighmen.

SEC. 35. Only members who contribute to the support of Checkweighmen shall have a right to vote for their election.

SEC. 36. Checkweighmen must be members of the United Mine Workers of America six months previous to their election and shall keep a record of all men employed in and around the mine and perform such other duties as may be assigned them by the men who employ them. This section shall not apply to newly organized Locals.

SEC. 37. All Local Officers entrusted with the finances of the Organization must give bond to insure a faithful performance of their duty; the bond to be secured and the amount thereof to be determined by the District Organization.

Any Local Union refusing to bond its officers as required herein shall be placed on the delinquent list.

SEC. 38. The Local seal shall remain in the custody of the Local Recording Secretary and that officer shall be responsible for any misuse of the same.

SEC. 39. It shall be the duty of every member to see that his Local Union is in good standing at all times, and any member failing to report to the International Office any delinquency on the part of his Local Union must suffer any penalty applied to the Local Union for such delinquency.

SEC. 40. All Local Unions shall subscribe annually for one copy of the official Journal, and Recording Secretaries must examine every issue and read all official circulars therein to the members of their Local Unions.

SEC. 41. Local Unions shall appoint label committees, who shall act, according to the directions of the Local in authority, in encouraging the purchase of goods bearing the Union label.

ARTICLE XV

Transfer cards

SECTION 1. All Transfer Cards must be purchased from the International Secretary-Treasurer, who shall send out a monthly statement to the Local Unions and Traveling Auditors, showing the number of Transfer Card Books sold and giving the number of each book and the number of the Local Union purchasing the same. All Transfer Cards must be purchased by the Local Recording Secretary, who must make an entry on his minute book showing the serial number of the book of Transfer Cards received.

SEC. 2. The form of Transfer Card in present use shall be continued as the official Transfer Card of the United Mine Workers of America. (See facsimile in center of book.)

SEC. 3. The Transfer Card must show that the member receiving it has paid all obligations up to and including the month in which it was issued, also at what class of labor he was employed.

SEC. 4. No Local Union placed on the delinquent list or which is in bad standing with any branch of the Organization, shall have author-

ity to issue Transfer Cards until it has been reinstated to good standing.

SEC. 5. Local Officers must examine the monthly "Delinquent Statement" sent out by the International Secretary-Treasurer and shall not receive any Transfer Card issued by any Local Union appearing thereon.

SEC. 6. The International President shall have authority to restrain for reason, or to grant any District the authority to restrain, for reason, any Local Union from issuing Transfer Cards, and Local Unions receiving official notice that any Local Union has been so restrained shall not receive any Transfer Card issued by such Local.

SEC. 7. Transfer Cards issued in violation of Sections 3, 4 and 6 of this Article, will be invalid, and Local Officers responsible for their issuance shall be fined $10.00 for each card so issued and permanently removed from office; or any Local Officer accepting a Transfer Card in violation of Sections 5 and 6 of this Article shall be fined $10.00 for each card so accepted and permanently removed from office by the International Executive Board; and any Local Union refusing to enforce the above penalties when applied shall be placed on the delinquent list and can be reinstated only in accordance with Section 18 of Article XIV.

SEC. 8. When a person who has not been a member of the Organization three months or more secures a Transfer Card from a Local Union in a District where a dispensation has been granted, said Transfer Card shall not be accepted by any Local in a different District unless the holder agrees to pay the difference between the initiation fee already paid and the initiation fee of the District where he desires to deposit his card.

SEC. 9. Any member depositing a Transfer Card must pay all arrearages due on the card or sign a check-off order for the arrearage when the card is deposited, and shall be subject to the laws of the District having jurisdiction over the Local Union in which the card is deposited, but no District shall have authority to enact laws prohibiting the acceptance of valid Transfer Cards.

SEC. 10. Any Transfer Card that is lapsed for a period of three months shall be invalid and shall not admit the holder to membership in any Local Union.

SEC. 11. Any member withdrawing his Transfer Card from a Local shall be known as a member of the Local issuing the card until it is deposited with some other Local or until the card is lapsed, except as provided in Section 3 of Article XIV.

SEC. 12. No member holding a Transfer Card shall be entitled to strike benefits (where such are paid) from the Local Union issuing the card, until such card has been redeposited with said Local, and then only from the date on which the card was redeposited.

SEC. 13. Due cards shall not admit any member to membership from one Local to another. Such transfer must be made by Transfer Card, and any member in good standing shall be entitled to a Transfer Card from his Local Union upon request, except as restricted by Sections 4 and 6 of this Article. When a Local Union is disbanded the Local Officers shall prepare a Transfer Card for every member entitled to the same, and any card that is unclaimed when the charter and supplies are taken over by the District Organization shall be

sent to the District Secretary, to be held until claimed by its rightful owner, or until the Transfer Card is lapsed.

SEC. 14. To protect the membership of members residing where no Local Union is established, the International, District or Sub-District Secretaries shall upon presentation accept Transfer Cards and dues and assessments from such members, but no such Secretary shall accept Transfer Cards, dues or assessments from members having access to a Local Union.

SEC. 15. The Local Financial and Recording Secretaries shall keep a record of all Transfer Cards issued and received, for inspection by the Local and Traveling Auditors. Local Union Secretaries failing to forthwith mail stubs attached to Transfer Cards to Local Unions issuing the cards shall be fined Five Dollars.

SEC. 16. Any member of the Organization found guilty of trafficking in or abusing the use of Transfer Cards shall, when possible, be prosecuted in the civil courts by the District Organization and shall in every instance be permanently expelled by the International Executive Board.

SEC. 17. No legal holder of a valid Transfer Card, who has complied with Sections 8 and 9 of this Article, shall for any reason be debarred from membership in any Local Union or hindered from securing employment in any mine under the jurisdiction of the United Mine Workers of America. Violations of this clause shall be prosecuted under Section 2 of Article VI.

SEC. 18. Transfer Cards issued by Local Unions of District 50 and the International Mining Congress and Miners' Unions in Australia and New Zealand shall be accepted by the United Mine Workers, provided such cards show that the holders thereof are practical miners and have been dues-paying members of the organizations mentioned for at least six months just previous to the time such cards are deposited with the United Mine Workers of America, and shall be subject to the same provisions governing the acceptance of United Mine Workers' cards.

ARTICLE XVI

Strikes

SEC. 1. No District shall be permitted to engage in a strike involving all or a major portion of its members, without the sanction of an International Convention or the International Executive Board.

SEC. 2 Districts may order local strikes within their respective Districts on their own responsibility, but where local strikes are to be financed by the International Union, they must be sanctioned by the International Executive Board.

SEC. 3. Strikes shall not be called in any unorganized field without the sanction of an International Convention or the International Executive Board, and no financial aid shall be furnished by the International Union for the support of any strike until after the strike has been in effect four weeks, unless otherwise decided by the International Executive Board.

SEC. 4. The International Executive Board shall decide the conditions upon which strikes may be financed by the International Union; determine the amount of relief to be paid per member involved, etc.

SEC. 5. When strikes are sanctioned and financed by the International Union, the International President may appoint, subject to the approval of the International Executive Board, a financial agent who shall assume responsibility for all International funds so expended, said financial agent to be bonded; amount of bond to be determined by the International Executive Board, and no bills shall be paid by the International Union unless contracted or authorized by said financial agent, the resident International Officers or the International Executive Board.

SEC. 6. When strikes are financed by the International Union the International Secretary-Treasurer shall furnish each Local Union involved with report blanks on which all expenditures must be detailed as provided on the blanks, and Recording Secretary shall fill out said blanks weekly; have the same attested by the Local President and Financial Secretary; attach the seal of the Local Union and forward one copy to the International Secretary-Treasurer; one copy to the financial agent in charge of the finances and retain one copy in the Local Union for future reference. Local Unions failing to comply with this section shall not receive financial relief from the International Union.

SEC. 7. The International Secretary-Treasurer shall devise a uniform system of accounting for the use of financial agents handling strike funds for the International Union, and it shall be the duty of the Traveling Auditors employed in the District where the strike prevails, or such person as may be authorized by the International President, to audit the accounts of the financial agent at least every quarter of the period of the strike, or as often as the International Secretary-Treasurer may consider an audit necessary, and a final audit must be made when the strike is ended, and the Auditor making such audits shall file a report of each audit with the International Secretary-Treasurer, who in turn shall submit them to the membership in his financial report.

SEC. 8. Any member who leaves a locality where a strike is in progress, goes to work in another locality and remains away one month or more, shall not be entitled to strike benefits if he returns to the strike zone while the strike is on.

ARTICLE XVII

Organizers

SECTION 1. Organizers' Commissions must be signed by the International President and attested by the International Secretary-Treasurer.

SEC. 2. International Organizers shall work under the direction of the International President or the International Executive Board and shall have authority to visit any Local Union within the jurisdiction of the United Mine Workers, when directed by the proper authority to do so.

ARTICLE XVIII

Charges and methods of trials

SECTION 1. When any officer of the Organization, other than local, is charged with official delinquency or malfeasance, other than as to the particular offenses described in Section 7 of this Article, the charge must be lodged with the Executive Board of the branch of which he is an officer and the decision of said Executive Board shall close the case insofar as such tribunal is concerned, but should the accused or his accuser be dissatisfied with the decision of the tribunal first trying the case, either shall have the right of appeal to the next highest tribunal in authority and so on until a final decision is reached, as provided in Section 3 of Article III.

SEC. 2. When any Local officer or any member not an officer, is accused of violating any of the Organization's laws or any transgression against the Organization or any of its officers or members, other than as to the particular offenses described in Section 7 of this Article, the charge must be first lodged with and prosecuted before the Local Union of which the alleged offender is a member and the decision of the Local Union shall close the case so far as that tribunal is concerned, but should the accused or his accuser be dissatisfied with the decision of the tribunal first trying the case, either shall have the right of appeal to the next highest tribunal in authority and so on until a final decision is reached, as provided in Section 3 of Article III, except as otherwise provided in this Constitution.

SEC. 3. When Sub-District Conventions are in session, they shall be recognized as intermediary trial tribunals between the Sub-District and District Executive Boards, and District Conventions in session shall be recognized as intermediary trial tribunals between the District and International Executive Boards and International Conventions in session may assume the functions of the International Executive Board, but if it can be shown that any case prosecuted under this Article has been unnecessarily delayed on account of awaiting the arrival of a Sub-District, District or International Convention, said Convention shall refuse to consider the case, and shall refer it back to the respective Executive Board without prejudice.

SEC. 4. When it is proven that either party to a case has wilfully failed to appear before the proper tribunal for a hearing, after receiving official notice to do so, the case shall be decided in favor of the disputant so appearing and no appeal shall be allowed, and if neither disputant appears, the case shall be closed by default.

SEC. 5. The tribunal first trying any officer or member for any offense against the Organization or any of its members, except as elsewhere herein provided, shall have the right to fix the penalty for the offense, but any offense committed or penalty imposed shall be subject to review as hereinbefore provided for.

SEC. 6. The foregoing sections of this Article shall not prevent the enforcement of penalties as provided elsewhere in this Constitution; nor interfere with the right of recall as provided by Section 29 of Article XI, or the provisions relating to the revocation of charters of

subordinate branches; nor shall they interfere with trials by the International Executive Board as provided in the next section.

SEC. 7. When any officer of the International Organization, or of any District, Sub-District or Local thereof, or when any member of the United Mine Workers of America, is charged with fomenting, leading or encouraging a dual union, or a dual movement within the Organization, upon charges being filed with the International Executive Board, notice to such accused person or persons of not less than five days of the time and place of hearing shall be given, and a hearing of said charges shall be had. If upon such hearing the International Executive Board finds such officer or officers or person or persons guilty, it may order the removal of such officer from office and his expulsion from the Organization or suspension from membership, and in the case of a member accused and found guilty the Board may order the expulsion of such member from the Organization or the suspension of his membership. An appeal may be taken by the accused from such decision of the International Executive Board to the next International Convention. In all such cases the decision of the International Executive Board, shall be effective unless reversed by the International Convention.

ARTICLE XIX

Official Journal

The publication and management of our official Journal shall be left with the International Executive Board, which body shall have full power to decide all questions concerning publication, business management and policies thereof.

ARTICLE XX

District 50

SECTION 1. District 50, United Mine Workers of America, subject to the jurisdiction and regulation of the International Executive Board, is hereby created and set up under authority of the International Union and may adopt by-laws and rules not inconsistent with this Constitution.

ARTICLE XXI

Miscellaneous

SECTION 1. Any officer or any member of any branch of the Organization guilty of embezzlement or of misappropriating any of the funds of the Organization, shall be prosecuted by every means possible by the branch whose funds are embezzled or misappropriated, and shall not be allowed to hold any office in the Organization thereafter.

SEC. 2. Any officer of any branch of the Organization accepting a salaried political office other than that of a State Legislator, Member of Congress, Member of Provincial Parliament, County Sheriff, or Member of State Board of Arbitration, Local School Board, City, Borough or Town Council, or Local Poor Boards, Member of Miners

Examining Boards granting certificates of competency, or member serving on Industrial Insurance Commission and any other office legislating or administering laws affecting labor, shall resign his office in the United Mine Workers of America immediately upon his acceptance of the same.

SEC. 3. Any member guilty of slandering or circulating, or causing to be circulated, false statements about any member or any members circulating or causing to be circulated any statement wrongfully condemning any decision rendered by any officer of the Organization, shall, upon conviction, be suspended from membership for a period of six months and shall not be eligible to hold office in any branch of the Organization for two years thereafter. The above shall be construed as applying to any local officer or member reading such circulars to the members of a local union, or who in any way gives publicity to such. This also includes the circulating of any statements from or giving any aid to any organization set forth in Section 2 of Article XIV.

SEC. 4. Any officer or any employee of any branch of the Organization seen in public in a state of intoxication shall, upon conviction, be at once removed from his position by the proper authority having jurisdiction over such officer or employee.

SEC. 5. The Cooperative Retirement Plan for officers and employees of the United Mine Workers of America provides that retirement pensions shall begin on the first of the month nearest a participant's sixty-fifth birthday, and must begin on his seventieth birthday. Therefore, an officer, Executive Board member or employee of the International Union shall retire from the service of the United Mine Workers of America upon his seventieth birthday. Exceptions to this obligatory retirement age may be made by the International Executive Board if it finds it necessary to continue the services of an officer, Executive Board member or employee.

SEC. 6. All officers of all branches of the United Mine Workers of America must, upon retiring from office, turn over to the branch of the Organization they represented all moneys, official records and documents, and all property belonging to the Organization that may be in their possession at the time of retirement.

SEC. 7. Any member of the United Mine Workers of America who furnishes a complete or partial list of our membership to any person or persons, except to those whose official business requires them to have such a list, shall be subject to a fine of ten dollars and be debarred from holding office in the Organization for a period of one year.

SEC. 8 When possible, all persons employed by our Organization in and around headquarters and the United Mine Workers Journal shall be members of organized labor.

SEC. 9. Sick, accident and death benefit funds may be established by Districts, Sub-Districts or Local Unions if desired by two-thirds of the members of the respective bodies.

SEC. 10. Any member of the Organization who resorts to the civil courts to secure redress of an alleged wrong done him by the Organization, before exhausting his rights in the courts of the United Mine Workers of America, shall be expelled from the Organization and shall not be reinstated until the suit entered in the civil courts is withdrawn.

SEC. 11. Any member or members shutting down a mine in violation of Joint Agreement shall, upon conviction by the District organization, suffer such penalty as may be imposed upon them by the respective District organizations.

SEC. 12. When a Local charter is revoked the members thereof shall be required to pay an initiation fee of $10 before they can again secure membership in the United Mine Workers of America, excepting those who have complied with the laws of the Organization and Joint Agreements.

SEC. 13. Local Unions may fine members 50 cents for failure to attend at least one meeting per month; provided, however, Local Union rules pertaining to this fine shall be approved by the District Organization.

SEC. 14. This Constitution shall be in full force and effect from October 1, 1944, and shall remain in full force and effect until amended by the majority vote of the delegates of the next International Constitutional Convention.

BURIAL SERVICE

The following burial service is adopted to be used at funerals of deceased members of the United Mine Workers of America:

Fellow Workers: We are assembled here today to pay a last sad tribute of love to our departed friend and brother. This solemn occasion speaks forcibly of our mortality. We can say with the Psalmist: "What is man that Thou art mindful of him, or the son of man that Thou visiteth him, for man that is born of woman is full of trouble and sorrows. He cometh forth like a flower and is cut down. Our years of labor are brought to an end. Our dust shall return to the dust as it was, and our spirit to the God who gave it."

Again, fellow workers, we are reminded that we, too, are but mortal and will soon break the tenement of clay and depart for the hereafter, and it behooves each one of us to follow a line of conduct that will bring about a closer friendship, one that is true to God and man.

All our beautiful surroundings tell us of God's greatness and goodness, of the universe of which we are children of His creation.

But why should we be sad and mournful, when God can give us consolation while living here on earth, for His promise is that we shall meet again in the realms above, for the Word of God teaches us that we shall again meet after death.

And now, our fellow worker, we pay the last sad rite and tribute of respect, the last one we can pay you in this world, placing on your grave these evergreens as a token of respect, that thy memory shall be with us always, though thou hast paid the debt and hast gone to the realms above.

And now to the family and friends of this, our deceased brother, we tender our heartfelt sympathy in this, their sad hour of affliction, and bid them look to God for His tender mercies, for He alone can give them consolation.

And now, fellow worker, we bid thee a tender and loving farewell.

Let us pray: And now may grace, mercy, and peace from God the

Father, Son, and Holy Spirit rest and abide with you now and forevermore.

Amen.

MANUAL

OPENING

The hour of meeting having arrived, the President shall take the Chair and give one rap with the gavel, upon which all officers and members shall be seated. If no regular doorkeeper has been appointed, the President shall appoint one of the brothers to see that none but members of the Union are admitted.

President—The time for opening this meeting having arrived, I declare this meeting duly convened and qualified to consider measures tending to conserve the best interest of this Union, and the United Mine Workers of America.

ORDER OF BUSINESS

1. Roll call of officers.
2. Reading of minutes.
3. Correspondence.
4. Propositions for membership and initiation.
5. Finance.
6. Reports of Committees.
7. Unfinished business.
8. Naturalization of members.
9. New business.
10. Labor: Discussion in the interest of organized labor.
11. Election of officers and installation.

President—The business of this meeting having been duly transacted, I declare it adjourned until our next regular session, unless you are specially called together, when I hope to see all members present.

NATURALIZATION OF MEMBERS

Under this order of business, the presiding officer will inquire, "Are there any members present who desire to become citizens of the United States?" If there are those present who have not become American citizens and who wish to do so, their names should be referred to the Committee on Naturalization appointed by each Local Union whose duty it shall be to assist foreign-born members to become naturalized and to supply them with information regarding naturalization laws, and to help them in every way possible to become citizens of the United States.

NEW MEMBERS

Any member of a Local Union can propose anyone who works in or around the mine for membership in the organization. Propositions to be made to the Secretary, who shall announce the same to the Union, under the head of Order of Business No. 4.

President—Brothers, you have heard the name (or names) of the candidate (or candidates) who desire to become members of this Union. Are there any objections?

NOTE: Local Unions having complete control over their own affairs shall decide by what vote they will admit members to their body; if objections are raised the President shall call for a vote in accordance with rules of the Union. If no objections are raised a vote is unnecessary, and the President shall say: No objections having been raised I declare the candidates entitled to take the obligation and become members of this Local Union.

INITIATION

President—Mr. Doorkeeper, are there any candidates in waiting who have been accepted by this Union?

Doorkeeper—Mr. President, I find Brothers ..... mine workers, who were elected to become members of this body.

President—Admit the brothers.

The doorkeeper will admit the candidates and place them in a line opposite the President.

President—Fellow Workmen: The United Mine Workers of America requires perfect freedom of inclination in every candidate for membership to its body. An obligation of fidelity is required; let me assure you that in this obligation there is nothing contrary to your civil or religious duties; with this understanding are you willing to take an obligation which binds you upon your honor as a man to keep the same as long as life remains?

Each candidate answers—I am.

President—Raise your right hand.

"I do sincerely promise, of my own free will, to abide by the laws of this Union; to bear true allegiance to, and keep inviolate the principles of the United Mine Workers of America; never to discriminate against a fellow worker on account of creed, color, or nationality; to defend freedom of thought, whether expressed by tongue or pen, to defend on all occasions and to the extent of my ability the members of our organization.

"That I will not reveal to any employer or boss the name of anyone a member of our union. That I will assist all members of our organization to obtain the highest wages possible for their work; that I will not accept a brother's job who is idle for advancing the interests of the Union or seeking better remuneration for his labor; and, as the mine workers of the entire country are competitors in the labor world, I promise to cease work at any time I am called upon by the organization to do so. And I further promise to help and assist all brothers in adversity, and to have all mine workers join our Union that we may all be able to enjoy the fruits of our labor; that I will never knowingly wrong a brother or see him wronged, if I can prevent it.

"To all this I pledge my honor to observe and keep as long as life remains, or until I am absolved by the United Mine Workers of America."

Answer—I promise.

President—You are now members of Local Union No. ..... and entitled to all rights and privileges of members of the United Mine Workers of America.

INSTALLATION OF OFFICERS

I,_____, do hereby sincerely pledge my honor to perform the duties of my office as prescribed by the Laws of the organization, and to bear true allegiance to the United Mine Workers of America. I will deliver to my successor in office all books and other property of this Union that may be in my possession at the close of my official term. All of this I solemnly promise, with full knowledge that to violate this pledge is to stamp me as a man devoid of principle and destitute of honor.

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In the District Court of the United States for the District of Columbia

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

CITY OF WASHINGTON,
District of Columbia, ss:

THOMAS KENNEDY, being first duly sworn under oath, deposes and says:

That he is the Secretary-Treasurer of the United Mine Workers of America; that pursuant to authority granted by John L. Lewis, President of the United Mine Workers of America, and pursuant to powers vested by the constitution of the United Mine Workers of America, including, among others, Section 15 and 17 of Article IX of the said constitution, Affiant is lawfully authorized to assign, transfer and deliver United States bonds registered in the name of the United Mine Workers of America to the Clerk of the United States District Court for the District of Columbia in order to secure the payment of a judgment rendered against the United Mine Workers of America on December 4, 1946, in the above-styled cause.

(S) Thomas Kennedy.
THOMAS KENNEDY.

Subscribed and sworn to before me this 6th day of December 1946.

(S) DOROTHY L. PARKER, *Notary Public.*

My Commission Expires August 15, 1946.

[Filed, Dec. 5, 1946, Charles E. Stewart, Clerk.]

In the District Court of the United States for the District of Columbia

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Order staying execution of judgments in contempt

Notice of appeals from the Orders and Judgments for Contempt in the above entitled matter having been given and filed this 5th day of

December 1946, and a bond in the amount of $10,000.00 on behalf of defendant John L. Lewis individually having been approved and filed, and a bond in the amount of $3,500,000.00 on behalf of defendant United Mine Workers of America, an unincorporated association, having been approved and filed, it is hereby ordered, adjudged and decreed on the motion of defendants, United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as president of the United Mine Workers of America, for a stay of execution of the judgments in contempt, that said motion be granted and execution of said judgments be hereby stayed during the pendency of said appeals.

(S) T. ALAN GOLDSBOROUGH,
Justice.

December 5, 1946.

[Filed December 5, 1946. Charles E. Stewart, Clerk.]

In the District Court of the United States for the District of Columbia

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Plaintiff's designation of record on appeal

To the Clerk of the Above Court:

Plaintiff herein designates as and for the papers to be included in and to constitute the record on appeal to be certified and forwarded to the United States Court of Appeals for the District of Columbia, as directed by the above-entitled Court by its order dated December 5, 1946, all of the pleadings, attached exhibits, supporting affidavits, orders, memoranda, motions, statements of points and authorities and briefs, the complete reporter's transcript of the proceedings and hearings, all of plaintiff's and defendants' exhibits and all other papers filed in the above cause with the exception of the following:

All subpoenas and subpoenas *duces tecum* to witnesses and the returns thereof or thereon.

TOM C. CLARK,
Attorney General.
By John F. Sonnett,
JOHN F. SONNETT,
Assistant Attorney General.

[Filed Dec. 6, 1946. Charles E. Stewart, Clerk.]

In the District Court of the United States for the District of Columbia

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Charles E. Stewart, Clerk of the District Court of the United States for the District of Columbia, hereby certify the foregoing pages number 1----, both inclusive in Volumes I, II and III, together with pages-- to --, of the Supplemental Volume IV, to be a true and correct transcript of the record according to designation of record by counsel filed and made a part of this transcript, and pursuant to Rule 73 (g) of the Federal Rules of Civil Procedure for the District Courts of the United States, in action entitled *United States of America*, Plaintiff v. *United Mine Workers of America*, an unincorporated association, and *John L. Lewis*, individually and as President of the United Mine Workers of America, an unincorporated association, Defendants, Civil Action No. 37764, as the same remains upon the file of record in said Court.

In testimony whereof, I hereandto subscribe my name and affix the seal of said Court at the City of Washington in said District this – day of December 1946.

CHARLES E. STEWART,
Clerk.

———— ————,
Deputy Clerk.

In the United States Court of Appeals, District of Columbia

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Joseph W. Stewart, Clerk of the United States Court of Appeals, District of Columbia, hereby certify the foregoing pages numbered 1 —, both inclusive, in Volumes I, II and III, together with pages — to — of Supplemental Volume IV, to be a true and correct transcript of the record in the appeal entitled *United Mine Workers of America*, an unincorporated association, and *John L. Lewis*, individually and as President of the United Mine Workers of America, an unincorporated association, Appellants, v. *United States of America*, Appellee, as the same remains upon the file and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court at the City of Washington in said District this — day of December 1946.

JOSEPH W. STEWART,
Clerk.

———— ————
Deputy Clerk.

[fols. 555-557] [Caption omitted]

[fol. 558] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Civil Action No. 37764

UNITED STATES OF AMERICA, Plaintiff,

vs.

UNITED MINE WORKERS OF AMERICA, an Unincorporated Association, and John L. Lewis, Individually and as President of the United Mine Workers of America, Defendants

NOTICE OF APPEAL—Filed December 19, 1946

Notice is hereby given this 19th day of December, 1946, that United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as President of the United Mine Workers of America, defendants above named, hereby appeal to the United States Court of Appeals for the District of Columbia from the order and judgment granting a preliminary injunction entered in this action on the Fourth day of December, 1946, and from the temporary restraining order granted November 18, 1946, and the order extending said temporary restraining order granted November 27, 1946, all in favor of United States of America against said United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as President of the United Mine Workers of America.

Welly K. Hopkins, Edmund Burke, T. C. Townsend, Harrison Combs, Counsel for United Mine Workers of America, John L. Lewis, Individually, John L. Lewis, President, United Mine Workers of America.

Of counsel: Joseph A. Padway, Henry Kaiser, James A. Glenn.

[fol. 559] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Civil Action No. 37764

[Title omitted]

DEFENDANTS' DESIGNATION OF RECORD ON APPEAL—Filed December 19, 1946

To the Clerk of the above Court:

1. Defendants herein designate as and for papers to be included in and to constitute the record on appeal to be certified and forwarded to the United States Court of Appeals for the District of Columbia, the notice of appeal filed herein by the defendants on December 19, 1946.

2. Defendants further designate for the record on this appeal the entire record in this case heretofore certified to the United States Court of Appeals for the District of Columbia by this Honorable Court. (Note to Clerk: The matter designated in this paragraph #2 need not be copied and certified at this time for the reason that application will be made to the reviewing Court to treat the record, heretofore certified in Nos. 9436 and 9437 in that Court, as part of the record on this appeal.)

(S.) Harrison Combs, James A. Glenn, Counsel for Defendants.

Copy of the above served on Hon. Tom C. Clark, Attorney General, this 19th day of December, 1946, by mailing to him at his office in Washington, D. C. (S.) Harrison Combs, Counsel for Defendants.

[fol. 560] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Civil Action No. 37764

[Title omitted]

DESIGNATION OF RECORD—Filed December 20, 1946

To the Clerk of the Above Court:

It is hereby requested that the "Notice of Appeal" and "Defendants' Designation of Record on Appeal" filed herein by the defendants on December 19, 1946, be certified and transmitted to the Court of Appeals for the District of Columbia as a part of the record herein.

Jos. A. Padway, Counsel for Defendants.

Plaintiff interposes no objection to the above designation.

Tom C. Clark, Attorney General of the United States, by John F. Sonnett, Assistant Attorney General.

Dated this 20th day of December, 1946.

[fols. 561-562] Clerk's Certificate to foregoing papers omitted in printing.

[fol. 563] IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 9453

UNITED MINE WORKERS OF AMERICA, an Unincorporated Association, and JOHN L. LEWIS, Individually and as President of the United Mine Workers of America, Appellants,

vs.

UNITED STATES OF AMERICA, Appellee

DESIGNATION OF RECORD—Filed December 21, 1946

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for writ of certiorari in the above entitled cause, and include therein the following:

1. Transcript of record.

2. This designation.

3. Clerk's certificate.

Harrison Combs, Attorney for Appellants.

Dated this 20th day of December, 1946.

I hereby certify that I have this 21st day of December, 1946, mailed a copy of this designation of record to Hon. Tom C. Clark, Attorney General of the United States.

Harrison Comba, Attorney for Appellants.

[fol. 564] Clerk's Certificate to foregoing papers omitted in printing.

[fol. 565] Supreme Court of the United States, October Term, 1946

No. 759

Order Allowing Certiorari—Filed December 9, 1946

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted. The case is assigned for argument on Tuesday, January 14th, next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 566] Supreme Court of the United States, October Term, 1946

No. 760

Order Allowing Certiorari—Filed December 9, 1946

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted. The case is assigned for argument on Tuesday, January 14th, next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 567] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. 781

ORDER ALLOWING CERTIORARI—Filed December 16, 1946

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted, and the case is consolidated with Nos. 759 and 760.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 568] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. 782

ORDER ALLOWING CERTIORARI—Filed December 16, 1946

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted, and the case is consolidated with Nos. 759 and 760.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 569] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

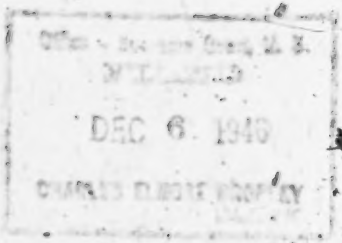
No. 811

ORDER ALLOWING CERTIORARI—Filed December 23, 1946

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted, and the case is consolidated with Nos. 759, 760, 781, and 782.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY



No. 759-760

In the Supreme Court of the United States

OCTOBER TERM, 1946

THE UNITED STATES OF AMERICA, PETITIONER

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. —

THE UNITED STATES OF AMERICA, PETITIONER

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

The Attorney General, on behalf of the United States, prays that a writ of certiorari issue to review the judgments of the District Court of the United States for the District of Columbia entered in the above-entitled case on December 4, 1946, which case is now pending in the United States Court of Appeals for the District of Columbia on an appeal by respondents.

OPINION BELOW

The opinion of the District Court on various aspects of the case has not yet been officially re-

ported. The court's findings of fact and conclusions of law are hereinafter set forth.

JURISDICTION

The judgments of the District Court were entered on December 4, 1946. On December 4th and 5th, 1946, the respondents filed notices of appeal in the District Court and said notices were forwarded to the clerk of the Court of Appeals. The case has not been heard, submitted to, or decided by the Court of Appeals. The jurisdiction of this Court is invoked under the provisions of Section 240 (a) of the Judicial Code, as amended, 28 U. S. C. 347 (a).

QUESTION PRESENTED

Did the District Court of the United States in this case have the power under the Constitution and Statutes by the issuance of a temporary restraining order to prevent irreparable injury to the people of the United States, to prevent interference with sovereign functions of the United States, and to protect the District Court's jurisdiction to decide questions of law and fact incident thereto?

CONSTITUTIONAL PROVISIONS, STATUTES, AND EXECUTIVE ORDERS INVOLVED

The following constitutional provisions and statutes are set forth in the Appendix, printed at pp. 30–53:

(1) Constitution, Article III, Sections 1 and 2;

(2) Judicial Code, Section 24 (1) (28 U. S. C. 41 (1));

(3) the Federal Declaratory Judgment Act (Act of June 14, 1934, as amended, Section 274 (d) of the Judicial Code (28 U. S. C. 400);

(4) the War Labor Disputes Act of June 25, 1943, c. 144, 57 Stat. 163, 2 U. S. C. Supp. V, 251, 50 U. S. C. App., Supp. V, 309, 1501–1511;

(5) the pertinent portion of Section 9 of the Selective Training and Service Act of 1940, as amended (Act of September 16, 1940, c. 720, 54 Stat. 885, 50 U. S. C. App. 301 *et seq.*, as amended by Act of June 25, 1943, 57 Stat. 163, 50 U. S. C. App., Supp. V, 1501 *et seq.*);

(6) the Norris-LaGuardia Act of March 23, 1932, c. 90, 47 Stat. 70, 29 U. S. C. 101–115;

(7) The Clayton Act, Act of October 15, 1914, c. 323, Section 20, 38 Stat. 738 (29 U. S. C. 52);

(8) Executive Order No. 9728, of May 21, 1946, authorizing the Secretary of the Interior to take over the bituminous coal mines, is also set forth in the Appendix, printed at pp. 53–56.

STATEMENT

This is a contempt proceeding arising from respondents' disobedience of a temporary restraining order issued by the District Court, on petitioner's application, in an action by petitioner

for declaratory judgment and for a preliminary injunction pending such declaratory judgment.

The issues presented to the District Court and the action of the District Court with respect to such issues are set forth in the Findings of Fact and Conclusions of Law of that court, which are as follows:

FINDINGS OF FACT

1. On May 21, 1946, after investigation, the President of the United States found and proclaimed that there were interruptions or threatened interruptions in the operation of the mines producing bituminous coal as the result of existing and threatened strikes or other labor disturbances; that the coal produced by such mines was required for the war effort and was indispensable for the operation of the national economy during the transition of war to peace; that the war effort would be unduly impeded or delayed by such interruptions; and that the exercise, by the President, of the powers vested in him by the Constitution and Laws of the United States was necessary to insure the operation of such mines in the interest of the war effort and to preserve the national economic structure in the then existing emergency.

2. On May 21, 1946, the President of the United States, by virtue of the authority vested in him by the Constitution and laws of the United States, issued Executive

Order 9728, whereby he authorized and directed the Secretary of the Interior to take possession of any and all bituminous coal mines the operations of which were then interrupted or threatened with interruption because of work stoppages, and, to the extent that he might deem necessary, of any real or personal property, franchises, rights, facilities, funds and other assets used in connection with the operation of such mines; to operate or arrange for the operation of such mines in such manner as he might deem necessary in the interest of the war effort; and to do all things necessary for, or incidental to, the production, sale, and distribution of the coal produced, prepared, or handled by the said mines.

3. Pursuant to the provisions of said Executive Order 9728, the United States, through J. A. Krug, the Secretary of the Interior, on and after May 22, 1946, duly took possession of most of the bituminous coal mines of the nation. Since that time, the United States, through the Secretary of the Interior, has been and now remains in possession of such coal mines.

4. As a consequence of negotiations authorized by the said Executive Order 9728, the Secretary of the Interior, as Coal Mines Administrator, on May 29, 1946, executed an agreement at Washington, D. C. with the defendant John L. Lewis, as President of the defendant Union (which agreement is hereinafter sometimes referred to as the Krug-Lewis Agreement).

5. On May 29, 1946, the Secretary of the Interior, acting pursuant to the authority of the aforesaid Executive Order 9728 and Section 5 of the War Labor Disputes Act, and in accordance with the provisions of the Krug-Lewis agreement, filed an application with the National Wage Stabilization Board for changes in wages and other terms and conditions of employment at the bituminous coal mines in Government possession. The National Wage Stabilization Board thereupon, on May 31, 1946, issued its order, pursuant to Section 5 of the War Labor Disputes Act, approving changes in wages and other terms and conditions of employment agreed upon in the Krug-Lewis agreement and directed that they be put into effect at the said mines. Said order was approved by the President of the United States on May 31, 1946.

6. The Krug-Lewis agreement, by its terms, "covers for the period of Government possession the terms and conditions of employment in respect to all mines in Government possession which were as of March 31, 1946, subject to the National Bituminous Coal Wage Agreement, dated April 11, 1945."

7. The defendant Lewis, on October 21, 1946, sent a letter to the Secretary of the Interior in which he stated that Section 15 of the National Bituminous Coal Wage Agreement, dated April 11, 1945, had been specifically carried forward into the Krug-Lewis agreement and that under that sec-

tion, either party to the Krug-Lewis agreement might give ten days' notice in writing of a desire for a negotiating conference upon the matters outlined in said notice; that the other party to the Krug-Lewis agreement was thereupon required to attend said negotiating conference; and that at the end of fifteen days after the beginning of said negotiating conference, either party might give to the other, a notice in writing of the termination of the Krug-Lewis agreement, to be effective five days after the receipt of such notice. Acting pursuant to this interpretation of the Krug-Lewis agreement, the defendant Lewis notified the Secretary of the Interior that the defendant Union requested "a joint conference of the accredited representatives of the joint contracting parties to the Krug-Lewis agreement of May 29, 1946, for the purpose of negotiating new arrangements affecting wages, hours, rules, practices, differentials, inequalities and all other pertinent matters affecting or appertaining to the National Bituminous coal industry".

8. In reply thereto, on October 22, 1946, N. H. Collisson, Captain, USNR, as Coal Mines Administrator, acting for the Secretary of the Interior, sent a letter to the defendant Lewis in which the Coal Mines Administrator stated that the Krug-Lewis agreement had superseded Section 15 of the National Bituminous Coal Wage Agreement dated April 11, 1945; that the provi-

sions of said Section 15 were no longer in effect; that, therefore, the Secretary of the Interior and the Coal Mines Administrator were unable to treat the defendant Lewis' letter of October 21, 1946, as a notice given pursuant to any existing contract provisions; and that the Coal Mines Administration considered the Krug-Lewis agreement in full force and effect; but that the Administration was ready to meet with the defendant Lewis "to discuss matters affecting the operation of the bituminous coal mines under the Krug-Lewis agreement, and for that purpose, with the above reservations, any date for such discussions is agreeable to this Administration."

9. On the same day, the defendant Lewis sent a further letter to the Secretary of the Interior in which he reiterated his position and asserted that failure of the Secretary of the Interior to accede to his request would void the Krug-Lewis agreement.

10. On October 27, 1946, the Secretary of the Interior sent a telegram to the defendant Lewis requesting the defendant Lewis and (or) his representatives to meet with the Coal Mines Administrator and his associates on November 1 or any other date agreeable to the defendant Lewis.

12. In reply to the said telegram of October 27, 1946, the defendant Lewis, by a telegram of October 28, 1946, to the Secre-

tary of the Interior, advised the Secretary of the Interior as follows:

"I ESTEEM YOUR TELEGRAM 27TH, RECEIVED BY ME TODAY, AS COMPLIANCE WITH REQUEST FOR OFFICIAL CONFERENCE CONTAINED BY LETTER 21 OCTOBER. I ACCORDINGLY ADVISE THAT REPRESENTATIVES UNITED MINE WORKERS WILL MEET WITH COAL MINES ADMINISTRATOR COLLISSON AND HIS ASSOCIATES AT 11 O'CLOCK A. M. ON FRIDAY, 1 NOVEMBER. UNDER THESE CONDITIONS KRUG-LEWIS AGREEMENT REMAINS EFFECTIVE AND UNCHANGED DURING PERIOD OF NEGOTIATION."

13. On November 1, 1946, a conference was held in Washington, D. C., attended by representatives of the Secretary of the Interior and of the defendant Union, and that conference was thereafter continued from time to time, from November 1 to and including November 14, 1946, all without prejudice to the contentions of the respective parties regarding the right claimed by the defendants to terminate the Krug-Lewis agreement by unilateral notice. During the course of the meeting, on November 11, 1946, attended by the defendant Lewis and the Secretary of the Interior, among others, the representatives of the defendant Union for the first time advanced specific proposals for changes in the wages and other terms and conditions of employment in effect at the bituminous coal mines in the Government's possession, which proposals included changes of a substantial and far-reaching nature and which would involve an increase in the cost of

production of coal at the mines of at least fifty cents a ton.

14. Thereafter, on November 15, 1946, the defendant Lewis sent a letter to the Secretary of the Interior stating that, "Fifteen days having now elapsed since the beginning of the above conference, the United Mine Workers of America, exercising its option, hereby terminates said Krug-Lewis agreement as of 12:00 o'clock p. m. midnight Wednesday, November 20, 1946."

15. On the same day the Secretary of the Interior advised the defendant Lewis, by letter, "that you have no power under the Krug-Lewis agreement of May 29 or under the law, by unilateral declaration, to terminate the contract which by its terms 'covers for the period of Government possession the terms and conditions of employment.'"

16. It has been for some years, and is now, as the defendants at all times well knew, the well established policy of the defendant Union, consistently adhered to by its members, that the miners will not work in the absence of a contract, and that upon the declaration by the defendants that no contract exists, the miners cease work. No other stoppage order ever goes out. Such a declaration of "no contract" is in fact a call to strike.

17. The defendants sent out and distributed to the membership of the defendant

Union a notice dated November 15, 1946, which read as follows:

UNITED MINE WORKERS OF AMERICA

JOHN L. LEWIS, President — Metropolitan 0530

[SEAL]

UNITED MINE WORKERS' BUILDING
WASHINGTON 5, D. C.

NOVEMBER 15, 1946

To the Members of the United Mine Workers of America:

Greetings:

The following is the exact text of a letter sent to the Secretary of the Interior, in charge of Coal Mines Administration:

"NOVEMBER 15, 1946

Honorable J. A. KRUG
Secretary of the Interior
Washington, D. C.

DEAR MR. SECRETARY: In accordance with the provisions of the Krug-Lewis Agreement dated May 29, 1946, the United Mine Workers of America on October 21, 1946, officially requested a joint conference of the accredited representatives of the joint contracting parties to said agreement. Such conference convened on November 1, 1946.

Fifteen days having now elapsed since the beginning of said conference, the United Mine Workers of America, exercising its option, hereby terminates said Krug-Lewis Agreement as of 12:00 o'clock

P. M., midnight, Wednesday, November 20, 1946.

Yours truly,

UNITED MINE WORKERS OF AMERICA,
By JOHN L. LEWIS, *President.*"

The foregoing is for your official information.

Sincerely yours,

/s/ JOHN L. LEWIS,
President.

This notice was a cease work or strike notice.

18. The letter of November 15, 1946, from the defendants to the Secretary of the Interior, purporting to terminate the Krug-Lewis agreement as of November 20, 1946, was released by the defendants to, and published by, the public press on or about November 15 and 16, 1946.

19. Thereafter, on November 18, 1946, the United States of America by the Attorney General of the United States, brought a suit against the United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as president of the United Mine Workers of America, under the Federal Declaratory Judgment Act (28 U. S. C. Sec. 400) to obtain a declaration of rights and other legal relations, including a declaratory judgment or decree, an order for temporary injunctive relief, and such further relief as might be necessary or proper.

20. Upon the filing of the verified complaint, and upon plaintiff's application, this Court, on November 18, 1946, issued a temporary restraining order against the defendants, based upon the facts alleged in the complaint and upon affidavits filed in support of the application for the restraining order. The restraining order directed:

"* * * that the defendants and each of them and their agents, servants, employees and attorneys, and all persons in active concert or participation with them, be and they are hereby restrained pending further order of this Court from permitting to continue in effect the notice heretofore given by the defendant John L. Lewis to the Secretary of Interior dated November 15, 1946; and from issuing or otherwise giving publicity to any notice that or to the effect that the Krug-Lewis Agreement has been, is, or will at some future date be terminated, or that said agreement is or shall at some future date be nugatory or void at any time during Government possession of the bituminous coal mines; and from breaching any of their obligations under said Krug-Lewis Agreement; and from coercing, instigating, inducing or encouraging the mine workers at the bituminous coal mines in the Government's possession, or any of them, or any person, to interfere by strike, slow down, walkout, cessation of work, or otherwise, with the operation of said mines by continuing in effect the aforesaid notice or by issuing any

notice of termination of agreement or through any other means or device; and from interfering with or obstructing the exercise by the Secretary of the Interior of his functions under Executive Order 9728; and from taking any action which would interfere with this Court's jurisdiction or which would impair, obstruct, or render fruitless, the determination of this case by the Court."

The restraining order by its terms provided that it would expire at 3:00 o'clock p. m. on November 27, 1946, unless extended. Plaintiff's motion for a preliminary injunction was set down for hearing on November 27, 1946, at 10:00 o'clock a. m.

21. The defendants, and each of them, were duly and properly served at 2:15 p. m. on November 18, 1946, with a certified copy of the temporary restraining order, together with copies of the verified complaint, including and embracing plaintiff's prayer and motion for a temporary restraining order, and the supporting affidavits.

22. Following the service upon them of the Court's temporary restraining order, the defendants, as hereinafter more fully appears, have taken no action designed to withdraw the notice of alleged termination dated November 15, 1946, but on the contrary, have wilfully, wrongfully and deliberately permitted said notice to continue in effect. The defendants, and each of them, knew that, in accordance with their own established policy, if the notice of alleged

termination were not withdrawn and were permitted to continue in effect, a work stoppage at the mines would occur at midnight November 20, 1946. As a result of the foregoing, on or about November 18, 1946, there commenced at said coal mines a gradual walkout, strike, cessation of and refusal to work by the members of defendant Union, which increased daily until 12 o'clock midnight of November 20, 1946. Since that hour and at all times thereafter there has been a walkout, strike, cessation of and refusal to work by substantially all of the members of the defendant Union employed at coal mines in the possession of the Government.

23. On November 21, 1946, the United States, by its Attorney General, filed a petition, supported by affidavits, for a rule to show cause why the defendants should not be punished as and for a contempt of this Court, alleging that the defendants, in defiance of the terms of said temporary restraining order, had wilfully, wrongfully and deliberately disobeyed said order.

24. On said petition and affidavit, the Court on the same day issued a rule to show cause ordering said defendants to appear before this court on November 25, 1946, to show cause why they should not be punished as and for contempt of this court. It was further ordered that if upon the return of said defendants it should be found that the alleged contempt was not sufficiently

purged, a trial should be held on November 27, 1946, and the defendants should, unless waived by them, be tried upon the charges of contempt by this court with an advisory jury to be empaneled by the court.

23. On the return day, the defendants, being represented by counsel, and with the defendant John L. Lewis personally present in court, made an oral return to the rule to show cause as follows:

"The defendants and each of them respectfully state to the Court that they and each of them, since the giving of said notice of November 15, 1946, since the issuance of Your Honor's temporary restraining order of November 18, have done no act nor spoken any word pertaining to said notice or in reference to permitting it to continue in effect.

"The status of the notice and the position of each of the defendants in reference thereto remains today in the status which existed at the time of its giving and at all times subsequent thereto.

"The defendants and each of them, Your Honor, therefore respectfully say to this Court, that the situation with respect to such notice of November 15, 1946, for the reasons herein stated remains unchanged.

"The defendants and each of them respectfully deny the jurisdiction of this Honorable Court to have issued the temporary restraining order and the rule to show cause issued thereunder.

"The defendants will be prepared to present arguments on this question on November 27, the time fixed by the Court in its order, as we understand it, for the hearing of this case."

26. Thereupon, the Court, finding that a contempt had been alleged and that the alleged contempt had not been sufficiently purged by the defendants' return, ordered that the matter be set down for trial on November 27, 1946.

27. On November 26, 1946, defendants filed and served upon plaintiff a motion to discharge and vacate the rule to show cause in which they asserted that the Court was without jurisdiction over the subject matter of the cause; that equity will not enjoin the commission of a crime; that this was a proceeding for a criminal contempt, the defendants suggesting that it was based wholly on hearsay, information and belief and should have been presented as an independent proceeding; and finally that the restraining order was void because it contravened the First, Fifth and Thirteenth Amendments to the Constitution of the United States.

28. On November 27, 1946 and again on November 29, 1946, with the defendant Lewis personally in court on both days and both the defendant Union and the defendant Lewis represented by counsel, arguments were presented in support of and in opposition to the motion to discharge and vacate the rule to show cause.

29. On November 27, 1946, before the expiration date of the temporary restraining order issued on November 18, 1946, the court, on plaintiff's application and for good cause shown, over objection of defendants extended said temporary restraining order for a like period of ten days.

30. On November 29, 1946 this court denied defendants' motion to discharge and vacate the rule to show cause and set forth its reasons therefor in an opinion which appears in the record. Thereupon, the defendants entered pleas of not guilty, waived their rights, if any, to an advisory jury, and the case proceeded to trial before the court.

31. The defendants were, before the trial, apprised of the fact that they were charged with both a civil and a criminal contempt; were subsequently advised, in advance, of the names and identities of witnesses to be called by the plaintiff; and were, by their own admission in open court, liberally informed as to all relevant information and were given every opportunity to meet the contentions of the plaintiff.

32. A full and complete hearing extending over a period of four days, was had at which the parties were given full opportunity to present evidence, to cross-examine witnesses, to present argument and to avail themselves of any and all rights to which they might be entitled.

33. Throughout all hearings on this matter, commencing with the hearing on No-

vember 25, 1946, defendant John L. Lewis was personally present before this court.

34. The defendants, and each of them

(a) have at all times since 2:15 p. m. on November 18, 1946 permitted to continue in effect the notice of alleged termination given by the defendant John L. Lewis to the Secretary of Interior on November 15, 1946;

(b) have instigated, induced and encouraged the workers at said mines to interfere, by strike, slow-down, walkout and cessation of work, with the operation of said mines by continuing in effect the notice of November 15, 1946, purporting to terminate the Krug-Lewis Agreement;

(c) have completed the calling of a strike and have completed the instigation, inducement, and encouragement of the mine workers at the bituminous coal mines in the Government's possession to interfere, by strike, slow-down, walkout and cessation of work, with the operation of said mines, by permitting to remain outstanding the aforesaid notice of November 15, 1946, purporting to terminate the so-called Krug-Lewis Agreement;

(d) have instigated, induced and encouraged the workers at said mines to interfere by strike, slow-down, walkout, and cessation of work, with the operation of said mines, thereby interfering with and obstructing the exercise by the Secretary of the Interior of his functions under Executive Order No. 9728 and under the War Labor Disputes Act, and with the perform-

ance of other governmental functions, by failing to withdraw the notice of November 15, 1946, purporting to terminate the Krug-Lewis Agreement, and by failing to announce to and notify the members of defendant union employed at said mines that said notice of November 15, 1946 was withdrawn, and by failing to notify said members of defendant Union that there is in force and in effect an agreement or contract between the defendant Union and the United States of America, that is, the so-called Krug-Lewis Agreement; and

(e) have interfered with this court's jurisdiction and have impaired and obstructed the determination of this case by the court.

35. As of November 20, 1946 there were approximately 76,000,000 tons of bituminous coal on hand and if the current work stoppage continues production would then be at the rate of about 658,000 tons a week or about 5.3 percent of the normal production of about 12,500,000 tons a week. Normal requirements of bituminous coal during a three months' period beginning December 2, 1946 would be at the rate of approximately 54,000,000 tons a month and if all available coal could be treated as a pool, although such ideal distribution cannot as a practical matter be obtained, to be used for an assumed normal consumption the supply on hand on November 20, 1946 would last about 37 days.

36. The characteristics of the economy of the United States make it peculiarly vulnerable to a stoppage in coal production, largely because of its great dependence on machines, about 43 percent of all energy produced in the United States being derived from bituminous coal. Four-fifths of all energy used in driving locomotives on Class 1 railroads is derived from bituminous coal; about four-fifths of all fuels and energy-producing material used in the production of steel is derived from bituminous coal; over 50 percent of all energy used in the production of electric power by public utilities is derived from bituminous coal; and about four-fifths of all energy obtained for electric power is derived from bituminous coal. Over 80 percent of Class 1 railroads, over 60 percent of public utilities and steel producing industries, would have to shut down completely within sixty days if the current coal stoppage continues for that length of time.

37. If the current work stoppage were to continue for a sixty-day period there would be a decline in total employment of at least 5,000,000 full time workers and the national income would decline from the present rate of $170,000,000,000 per year to a rate of $150,000,000,000 per year with a resulting loss in income paid to workers at the rate of considerably more than $1,000,000,000 per month, and with a loss of national income, a fraction of which has been estimated at one billion to one and one-quarter

billion dollars during that period. A loss of even one billion dollars in income payments, only a fraction of the loss which would actually be suffered from a continued work stoppage, would result in a loss to the United States of tax revenues of about $280,000,000.

38. The current work stoppage has caused and will continue to cause irreparable injury to the plaintiff, to the people of the United States and to the industry and economy of the United States.

39. The coal produced by the mines now affected by the work stoppage is indispensable for the continued operation of the national economy during the transition from war to peace.

CONCLUSIONS OF LAW

1. The United States in seizing the mines pursuant to Executive Order 9728 and in operating them following such seizure was at all times exercising its sovereign functions derived from the Constitution and laws of the United States.

2. The defendants, and each of them, have obstructed and interfered with the exercise by the United States of its sovereign functions.

3. The defendants, and each of them, have unlawfully coerced, instigated, induced, and encouraged the mine workers at the bituminous coal mines in the Government's possession to interfere by strike, slow-down,

walkout, cessation of work, or otherwise, with the operation of coal mines.

4. By reason of the facts found in paragraphs numbered 34 (a) through 34 (e), above, the defendants, and each of them, have at all times since the service upon them on November 18, 1946, of the temporary restraining order of this Court, wilfully, wrongfully and deliberately disobeyed and violated the terms of the said temporary restraining order, and have obstructed and interfered with the determination of this case by the court.

5. The defendant United Mine Workers of America at all times since the service upon it on November 18, 1946, of the temporary restraining order, has, beyond a reasonable doubt, committed and continues to commit a civil contempt of this Court.

6. The defendant United Mine Workers of America at all times since the service upon it on November 18, 1946, of the temporary restraining order, has, beyond a reasonable doubt, been guilty, and is now guilty of a criminal contempt of this Court.

7. The defendant John L. Lewis at all times since the service upon him on November 18, 1946, of the temporary restraining order, has, beyond a reasonable doubt, committed and continues to commit a civil contempt of this Court.

8. The defendant John L. Lewis at all times since the service upon him on November 18, 1946, of the temporary restraining

order, has beyond a reasonable doubt, been guilty and is now guilty of a criminal contempt of this Court.

The judgment of the District Court was that respondent United Mine Workers of America, an unincorporated association, had, beyond a reasonable doubt committed civil contempt and had committed and was guilty of criminal contempt, and that it pay a fine in the sum of $3,500,000.

The judgment of the District Court with respect to respondent John L. Lewis was that he had beyond a reasonable doubt committed civil contempt and had committed and was guilty of criminal contempt, and that he pay a fine in the sum of $10,000.

REASONS FOR GRANTING THE WRIT

1. This Court has provided by Rule 39 that the fact "That the public interest will be promoted by prompt settlement in this court of the questions involved may constitute a sufficient reason" for the granting of certiorari to the United States Court of Appeals for the District of Columbia before judgment. In view of the irreparable injury threatened the United States by respondents' position that the District Court lacked jurisdiction to issue the Temporary Restraining Order in these proceedings, it is believed that the public interest clearly requires a prompt settlement of the issue by this Court. Only a determination of the

issue by this Court can authoritatively settle this question.

2. The power of a court to preserve its jurisdiction pending determination of the case is an essential prerequisite of the judicial process. A court has initial jurisdiction to determine its own jurisdiction, except in cases of out-right usurpation (*Stoll* v. *Gottlieb*, 305 U. S. 165, 171–2), and necessarily therefore is empowered to take preliminary action to preserve the subject matter before it, and to protect its jurisdiction to determine the merits of the controversy. Cf. *Jones* v. *Securities & Exchange Commission*, 298 U. S. 1, 17–18. Whether or not it is ultimately determined that the Norris-LaGuardia or the Clayton Acts may be applicable here, the District Court was authorized to resolve the issue. The issue of its jurisdiction in this case was certainly not frivolous.

This Court has expressly sanctioned punishment for contempt of such preliminary orders, regardless of the jurisdiction of the issuing court over the ultimate controversy. In *United States* v. *Shipp*, 203 U. S. 563, this Court unanimously sustained its jurisdiction to try for contempt a person violating an order which had stayed all proceedings against an accused pending appeal of a habeas corpus action to this Court, although there was doubt whether the court had jurisdiction of the habeas corpus appeal. Mr. Justice

Holmes stated that this Court and "it alone necessarily had jurisdiction to decide whether the case was properly before it. On that question, at least, it was its duty to permit argument and to take the time required for such consideration as it might need. * * * Until its judgment declining jurisdiction should be announced, it had authority, from the necessity of the case, to make orders to preserve the existing conditions and the subject of the petition * * *", 203 U. S. at 573. On similar grounds, in *Carter* v. *United States*, 135 F. 2d 858 (C. C. A. 5), the Circuit Court of Appeals sustained a contempt judgment entered by a district court for violation of a temporary restraining order issued in an injunction action against certain labor unions, although the Circuit Court of Appeals itself held, in a contemporaneous appeal in the main case, that the district court had no jurisdiction, under the Norris-LaGuardia Act, over the basic action for an injunction.

3. The issue of the effect of the Norris-LaGuardia and Clayton Acts upon the District Court's jurisdiction to grant the relief prayed for by the Government is not involved. In any event, however, the lower court correctly concluded that neither act denies the United States the right to invoke, or the federal courts the right to exercise, equitable powers necessary to prevent irreparable injury to the people of the

United States, to prevent interference with sovereign functions of the United States, and to protect the district court's jurisdiction pending a judicial determination of disputed issues. The Norris-LaGuardia Act does not refer, in specific terms or by necessary implication, to the United States, and traditionally the Government would not be bound by it. Moreover, the legislative history of the statute shows that it was not intended to curtail or limit the Government's sovereign powers or to curtail the jurisdiction of the Federal courts when invoked by the Government in support and protection of its sovereign functions. 75 Cong. Rec. 5464, 5503.[1]

4. Section 240 (a) of the Judicial Code, as amended, specifically authorizes the issuance of a writ of certiorari "upon the petition of any party," and the Court has said "that the sole essential of this Court's jurisdiction to review is that there be a case pending in the Circuit Court of Appeals." *Gay* v. *Ruff*, 292 U. S. 25, 30. The

[1] Representative Michener, a member of the committee which reported the bill which became the Norris-LaGuardia Act, stated, in his description of the measure (75 Cong. Rec. 5464): "* * * I do not believe that the enactment of the bill into law will take away from the Federal Government any rights which it has under existing law, to seek and obtain injunctive relief where the same is necessary for the functioning of the Government." Similarly, Representative LaGuardia, the sponsor of the legislation in the House, stated that he did not see any possible way in which "* * * the United States can be brought in under the provisions of this bill." 75 Cong. Rec. 5503.

Court has heretofore exercised its power to grant the writ, before hearing in the intermediate appellate court, on application of the prevailing party, in circumstances analogous to those presented here. *United States* v. *Bankers' Trust Co.* (reported *sub nom Norman* v. *Baltimore & Ohio R. Co.*), 294 U. S. 240, 243, 294, 295. The Government's petition in that case, October Term, 1934, Nos. 471–2, contains a full discussion of Section 240 (a), and the Court's power in the premises.

5. Rule 39 provides for proceedings to bring up to this Court on writ of certiorari a case pending in the circuit courts of appeals or the United States Court of Appeals for the District of Columbia before judgment is given in such court. In numerous cases that power has been exercised by this Court. *The Three Friends,* 166 U. S. 1; *Forsyth* v. *Hammond,* 166 U. S. 506; *St. Louis, Kansas City & Col. Rd. Co.* v. *Wabash Rd. Co.,* 217 U. S. 247, 250–251; *White* v. *Mechanics Securities Corp.,* 269 U. S. 283; *Royal Insurance Co.* v. *Fleet Corporation,* 280 U S. 320; *Fetters* v. *United States ex rel. Cunningham,* 283 U. S. 638, 641; *Eastern Equities Corp.* v. *United States,* 282 U. S. 409, 415; *Piedmont & Northern Ry. Co.* v. *Interstate Commerce Commission,* 286 U. S. 299; *United States* v. *Bankers' Trust Co.,* 294 U. S. 240; *Railroad Retirement Board* v. *Alton Railroad Co.,* 295 U. S. 330; *Rickert Rice Mills, Inc.*

v. *Pontenot,* 297 U. S. 110; *Carter* v. *Carter Coal Co.,* 298 U. S 238; *Hood & Sons, Inc.* v. *United States,* 307 U. S. 588; *Ex Parte Quirin,* 317 U. S. 1; *Porter* v. *Dicken,* Oct. Term, 1945, No. 1118, decided May 27, 1946. In all these instances, the exigency of immediate determination by this Court was far less than here, and the situation presented to this Court hardly as significant.

CONCLUSION

In view of the public interest involved, it is respectfully submitted that this petition for a writ of certiorari should be granted and that the rules of this Court be suspended in this case and that this Court require a prompt response to this petition and advance the case for argument.

TOM C. CLARK,
Attorney General.

DECEMBER 1946.

APPENDIX

1. Article III of the Constitution provides, in part, as follows:

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.
>
> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

2. Judicial Code, Section 24 (1), as amended, 28 U. S. C. 41 (1), provides in part as follows:

The district courts shall have original jurisdiction as follows:

First. Of all suits of a civil nature, at common law or in equity, brought by the United States, or by any officer thereof authorized by law to sue * * *.

3. The Federal Declaratory Judgment Act, Act of June 14, 1934, c. 512, 48 Stat. 955, as amended by the Act of August 30, 1935, c. 829, Sec. 405, 49 Stat. 1027, 28 U. S. C. 400, Judicial Code, Section 274d, provides as follows:

(1) In cases of actual controversy (except with respect to Federal taxes) the courts of the United States shall have power upon petition, declaration, complaint, or other appropriate pleadings to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed, and such declaration shall have the force and effect of a final judgment or decree and be reviewable as such.

(2) Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party, whose rights have been adjudicated by the declaration, to show cause why further relief should not be granted forthwith.

(3) When a declaration of right or the granting of further relief based thereon shall involve the determination of issues of fact triable by a jury, such issues may be submitted to a jury in the form of interrogatories, with proper instructions by the

court, whether a general verdict be required or not.

4. The War Labor Disputes Act (Act of June 25, 1943, c. 144, 57 Stat. 163, 50 U. S. C. App. (Supp. V), 1501–1511) provides as follows:

AN ACT, Relating to the use and operation by the United States of certain plants, mines, and facilities in the prosecution of the war, and preventing strikes, lockouts, and stoppages of production, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "War Labor Disputes Act."

DEFINITIONS

SEC. 2. As used in this Act—

(a) The term "person" means an individual, partnership, association, corporation, business trust, or any organized group of persons.

(b) The term "war contract" means—

(1) a confract with the United States entered into on behalf of the United States by an officer or employee of the Department of War, the Department of the Navy, or the United States Maritime Commission;

(2) a contract with the United States entered into by the United States pursuant to an Act entitled "An Act to promote the defense of the United States";

(3) a contract, whether or not with the United States, for the production, manufacture, construction, reconstruction, installation, maintenance, storage, repair, mining, or transportation of—

(A) any weapon, munition, aircraft, vessel, or boat;

(B) any building, structure or facility;

(C) any machinery, tool, material, supply, article, or commodity; or

(D) any component material or part of or equipment for any article described in subparagraph (A), (B), or (C);

the production, manufacture, construction, reconstruction, installation, maintenance, storage, repair, mining, or transportation of which by the contractor in question is found by the President as being contracted for in the prosecution of the war.

(c) The term "war contractor" means the person producing, manufacturing, constructing, reconstructing, installing, maintaining, storing, repairing, mining, or transporting under a war contract or a person whose plant, mine, or facility is equipped for the manufacture, production, or mining of any articles or materials which may be required in the prosecution of the war or which may be useful in connection therewith; but such term shall not include a carrier, as defined in title I of the Railway Labor Act, or a carrier by air subject to title II of such Act.

(d) The terms "employer", "employee", "representative", "labor organization", and "labor dispute" shall have the same meaning as in section 2 of the National Labor Relations Act.

POWER OF PRESIDENT TO TAKE POSSESSION OF PLANTS

SEC. 3. Section 9 of the Selective Training and Service Act of 1940 is hereby

amended by adding at the end thereof the following new paragraph:

"The power of the President under the foregoing provisions of this section to take immediate possession of any plant upon a failure to comply with any such provisions, and the authority granted by this section for the use and operation by the United States or in its interests of any plant of which possession is so taken, shall also apply as hereinafter provided to any plant, mine, or facility equipped for the manufacture, production, or mining of any articles or materials which may be required for the war effort or which may be useful in connection therewith. Such power and authority may be exercised by the President through such department or agency of the Government as he may designate, and may be exercised with respect to any such plant, mine, or facility whenever the President finds, after investigation and proclaims that there is an interruption of the operation of such plant, mine, or facility as a result of a strike or other labor disturbance, that the war effort will be unduly impeded or delayed by such interruption, and that the exercise of such power and authority is necessary to insure the operation of such plant, mine, or facility in the interest of the war effort: *Provided,* That whenever any such plant, mine, or facility has been or is hereafter so taken by reason of a strike, lock-out, threatened strike, threatened lock-out, work stoppage, or other cause, such plant, mine, or facility shall be returned to the owners thereof as soon as practicable, but in no event more than sixty days after the restoration of the productive efficiency thereof prevailing prior to

the taking of possession thereof: *Provided further,* That possession of any plant, mine, or facility shall not be taken under authority of this section after the termination of hostilities in the present war, as proclaimed by the President, or after the termination of the War Labor Disputes Act; and the authority to operate any such plant, mine, or facility under the provisions of this section shall terminate at the end of six months after the termination of such hostilities as so proclaimed."

TERMS OF EMPLOYMENT AT GOVERNMENT-OPERATED PLANTS

SEC. 4. Except as provided in section 5 hereof, in any case in which possession of any plant, mine, or facility has been or shall be hereafter taken under the authority granted by section 9 of the Selective Training and Service Act of 1940, as amended, such plant, mine, or facility, while so possessed, shall be operated under the terms and conditions of employment which were in effect at the time possession of such plant, mine, or facility was so taken.

APPLICATION TO WAR LABOR BOARD FOR CHANGE IN TERMS OF EMPLOYMENT AT GOVERNMENT-OPERATED PLANTS

SEC. 5. When possession of any plant, mine, or facility has been or shall be hereafter taken under authority of section 9 of the Selective Training and Service Act of 1940, as amended, the Government agency operating such plant, mine, or facility, or a majority of the employees of such plant, mine, or facility or their representatives,

may apply to the National War Labor Board for a change in wages or other terms or conditions of employment in such plant, mine, or facility. Upon receipt of any such application, and after such hearings and investigations as it deems necessary, such Board may order any changes in such wages, or other terms and conditions, which it deems to be fair and reasonable and not in conflict with any Act of Congress or any Executive order issued thereunder. Any such order of the Board shall, upon approval by the President, be complied with by the Government agency operating such plant, mine, or facility.

INTERFERENCE WITH GOVERNMENT OPERATION OF PLANTS

SEC. 6. (a) Whenever any plant, mine, or facility is in the possession of the United States, it shall be unlawful for any person (1) to coerce, instigate, induce, conspire with, or encourage any person, to interfere, by lock-out, strike, slow-down, or other interruption, with the operation of such plant, mine, or facility, or (2) to aid any such lock-out, strike, slow-down, or other interruption interfering with the operation of such plant, mine, or facility by giving direction or guidance in the conduct of such interruption, or by providing funds for the conduct or direction thereof or for the payment of strike, unemployment, or other benefits to those participating therein. No individual shall be deemed to have violated the provisions of this section by reason only of his having ceased work or having refused to continue to work or to accept employment.

(b) Any person who willfully violates any provision of this section shall be subject to a fine of not more than $5,000, or to imprisonment for not more than one year, or both.

FUNCTIONS AND DUTIES OF THE NATIONAL WAR LABOR BOARD

SEC. 7. (a) The National War Labor Board (hereinafter in this section called the "Board"), established by Executive Order Number 9017, dated January 12, 1942, in addition to all powers conferred on it by section 1 (a) of the Emergency Price Control Act of 1942, and by any Executive order or regulation issued under the provisions of the Act of October 2, 1942, entitled "An Act to amend the Emergency Price Control Act of 1942, to aid in preventing inflation, and for other purposes," and by any other statute, shall have the following powers and duties:

(1) Whenever the United States Conciliation Service (hereinafter called the "Conciliation Service") certifies that a labor dispute exists which may lead to substantial interference with the war effort, and cannot be settled by collective bargaining or conciliation, to summon both parties to such dispute before it and conduct a public hearing on the merits of the dispute. If in the opinion of the Board a labor dispute has become so serious that it may lead to substantial interference with the war effort, the Board may take such action on its own motion. At such hearing both parties shall be given full notice and opportunity to be heard,

but the failure of either party to appear shall not deprive the Board of jurisdiction to proceed to a hearing and order.

(2) To decide the dispute, and provide by order the wages and hours and all other terms and conditions (customarily included in collective-bargaining agreements) governing the relations between the parties, which shall be in effect until further order of the Board. In making any such decision the Board shall conform to the provisions of the Fair Labor Standards Act of 1938, as amended; the National Labor Relations Act; the Emergency Price Control Act of 1942, as amended; and the Act of October 2, 1942, as amended, and all other applicable provisions of law; and where no other law is applicable the order of the Board shall provide for terms and conditions to govern relations between the parties which shall be fair and equitable to employer and employee under all the circumstances of the case.

(3) To require the attendance of witnesses and the production of such papers, documents, and records as may be material to its investigation of facts in any labor dispute, and to issue subpenas requiring such attendance or production.

(4) To apply to any Federal district court for an order requiring any person within its jurisdiction to obey a subpena issued by the Board; and jurisdiction is hereby conferred on any such court to issue such an order.

(b) The Board, by its Chairman, shall have power to issue subpenas requiring the attendance and testimony of witnesses, and the production of any books, papers, records, or other documents, material to any inquiry or hearing before the Board or any designated member or agent thereof. Such subpenas shall be enforceable in the same manner, and subject to the same penalties, as subpenas issued by the President under title III of the Second War Powers Act, approved March 27, 1942.

(c) No member of the Board shall be permitted to participate in any decision in which such member has a direct interest as an officer, employee, or representative of either party to the dispute.

(d) Subsections (a) (1) and (2) shall not apply with respect to any plant, mine, or facility of which possession has been taken by the United States.

(e) The Board shall not have any powers under this section with respect to any matter within the purview of the Railway Labor Act, as amended.

NOTICE OF THREATENED INTERRUPTIONS IN WAR PRODUCTION, ETC.

SEC. 8. (a) In order that the President may be apprised of labor disputes which threaten seriously to interrupt war production, and in order that employees may have an opportunity to express themselves, free from restraint or coercion, as to whether they will permit such interruptions in wartime—

(1) The representative of the employees of a war contractor, shall give

to the Secretary of Labor, the National War Labor Board, and the National Labor Relations Board, notice of any such labor dispute involving such contractor and employees, together with a statement of the issues giving rise thereto.

(2) For not less than thirty days after any notice under paragraph (1) is given, the contractor and his employees shall continue production under all the conditions which prevailed when such dispute arose, except as they may be modified by mutual agreement or by decision of the National War Labor Board.

(3) On the thirtieth day after notice under paragraph (1) is given by the representative of the employees, unless such dispute has been settled, the National Labor Relations Board shall forthwith take a secret ballot of the employees in the plant, plants, mine, mines, facility, facilities, bargaining unit or bargaining units, as the case may be, with respect to which the dispute is applicable on the question whether they will permit any such interruption of war production. The National Labor Relations Board shall include on the ballot a concise statement of the major issues involved in the dispute and of the efforts being made and the facilities being utilized for the settlement of such dispute. The National Labor Relations Board shall by order forthwith certify the results of such balloting, and such results shall be open to public inspection. The National Labor Relations Board may provide for

preparing such ballot and distributing it to the employees at any time after such notice has been given.

(b) Subsection (a) shall not apply with respect to any plant, mine, or facility of which possession has been taken by the United States.

(c) Any person who is under a duty to perform any act required under subsection (a) and who willfully fails or refuses to perform such act shall be liable for damages resulting from such failure or refusal to any person injured thereby and to the United States if so injured. The district courts of the United States shall have jurisdiction to hear and determine any proceedings instituted pursuant to this subsection in the same manner and to the same extent as in the case of proceedings instituted under section 24 (14) of the Judicial Code.

POLITICAL CONTRIBUTIONS BY LABOR ORGANIZATIONS

SEC. 9. Section 313 of the Federal Corrupt Practices Act, 1925 (U. S. C., 1940 edition, title 2, sec. 251), is amended to read as follows:

"SEC. 313. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution in connection with any election to any political office, or for any corporation whatever, or any labor organization to make a contribution in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or for any candidate,

political committee, or other person to accept or receive any contribution prohibited by this section. Every corporation or labor organization which makes any contribution in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than $1,000 or imprisoned for not more than one year, or both. For the purposes of this section 'labor organization' shall have the same meaning as under the National Labor Relations Act."

TERMINATION OF ACT

SEC. 10. Except as to offenses committed prior to such date, the provisions of this Act and the amendments made by this Act shall cease to be effective at the end of six months following the termination of hostilities in the present war, as proclaimed by the President, or upon the date (prior to the date of such proclamation) of the passage of a concurrent resolution of the two Houses of Congress stating that such provisions and amendments shall cease to be effective.

SEPARABILITY

SEC. 11. If any provision of this Act or of any amendment made by this Act, or the application of such provision to any person or circumstance, is held invalid, the remainder of the Act and of such amendments, and the application of such provision to other persons or circumstances, shall not be affected thereby.

5. The pertinent portion of Section 9 of the Selective Training and Service Act of 1940 (Act of September 16, 1940, 54 Stat. 885, 50 U. S. C. App. 301, *et seq.*) as amended by the War Labor Disputes Act, is set forth in Section 3 of the War Labor Disputes Act, set forth at pp. 41–42.

6. The Norris-La Guardia Act, Act of March 23, 1932, c. 90, 47 Stat. 70, 29 U. S. C. 101–115, provides as follows:

> AN ACT To amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes.
>
> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That no court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act.
>
> SEC. 2. In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:
>
> Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the indi-

vidual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted.

SEC. 3. Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in section 2 of this Act, is hereby declared to be contrary to the public policy of the United States, shall not be enforceable in any court of the United States and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation, and any employee or prospective employee of the same, whereby

(a) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or

(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization.

SEC. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act.

SEC. 5. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 4 of this Act.

SEC. 6. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

SEC. 7. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public

officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided, however,* That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting

themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

SEC. 8. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

SEC. 9. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein.

SEC. 10. Whenever any court of the United States shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certify as in ordinary cases the record of the case to the circuit

court of appeals for its review. Upon the filing of such record in the circuit court of appeals, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character.

SEC. 11. In all cases arising under this Act in which a person shall be charged with contempt in a court of the United States (as herein defined), the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed: *Provided,* That this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court.

SEC. 12. The defendant in any proceeding for contempt of court may file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred elsewhere than in the presence of the court or so near thereto as to interfere directly with the administration of justice. Upon the filing of any such demand the judge shall thereupon proceed no further, but another judge shall be designated in the same manner as is provided by law. The demand shall be filed prior to the hearing in the contempt proceeding.

SEC. 13. When used in this Act, and for the purposes of this Act—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in

negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

SEC. 14. If any provision of this Act or the application thereof to any person or circumstance is held unconstitutional or otherwise invalid, the remaining provisions of the Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

SEC. 15. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed.

7. Section 20 of the Clayton Act of October 15, 1914, c. 323, Section 20, 38 Stat. 738, 29 U. S. C. 52, provides as follows:

No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with

particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

8. Executive Order No. 9728 provides as follows:

EXECUTIVE ORDER No. 9728

AUTHORIZING THE SECRETARY OF THE INTERIOR TO TAKE POSSESSION OF AND TO OPERATE CERTAIN COAL MINES

WHEREAS after investigation I find and proclaim that there are interruptions or threatened interruptions in the operation of

the mines producing bituminous coal as a result of existing or threatened strikes and other labor disturbances; that the coal produced by such mines is required for the war effort and is indispensable for the continued operation of the national economy during the transition from war to peace; that the war effort will be unduly impeded or delayed by such interruptions; and that the exercise, as hereinafter specified, of the powers vested in me is necessary to insure the operation of such mines in the interest of the war effort and to preserve the national economic structure in the present emergency:

NOW, THEREFORE, by virtue of the power and authority vested in me by the Constitution and laws of the United States, including Section 9 of the Selective Training and Service Act of 1940 (54 Stat. 892) as amended by the War Labor Disputes Act (57 Stat. 163), as President of the United States and Commander-in-Chief of the Army and Navy of the United States, it is hereby ordered as follows:

1. The Secretary of the Interior is authorized and directed to take possession of any and all such mines, and, to the extent that he may deem necessary, of any real or personal property, franchises, rights, facilities, funds, and other assets used in connection with the operation of such mines; to operate or to arrange for the operation of such mines in such manner as he may deem necessary in the interest of the war effort; and to do all things necessary for, or incidental to, the production, sale, and distribution of the coal produced, prepared, or handled by the said mines.

2. The Secretary of the Interior shall operate the said mines in accordance with such terms and conditions of employment as are in effect at the time possession thereof is taken, subject to the provisions of Section 5 of the War Labor Disputes Act.

3. Subject to the national wage and price stabilization policies as determined by the National Wage Stabilization Board and the Economic Stabilization Director, the Secretary of the Interior is authorized, pursuant to the provisions of Section 5 of the War Labor Disputes Act, following such negotiations as he may deem necessary with the duly constituted representatives of the employees, to apply to the National Wage Stabilization Board for appropriate changes in the terms and conditions of employment for the period of the operation of the mines by the Government.

4. In carrying out this order, the Secretary of the Interior shall act through or with the aid of such public or private instrumentalities or persons as he may designate. All Federal agencies are directed to cooperate with the Secretary of the Interior to the fullest extent possible in carrying out the purposes of this order.

5. The Secretary of the Interior shall make employment available and provide protection to all employees working at such mines and to all persons seeking employment so far as they may be needed; and upon the request of the Secretary of the Interior, the Secretary of War shall take such action, if any, as he may deem necessary or desirable to provide protection to all such persons and mines.

6. The Secretary of the Interior shall permit the managements of the mines taken under the provisions of this order to continue with their managerial functions to the maximum degree possible consistent with the aims of this order.

7. The Secretary of the Interior is authorized and directed to maintain customary working conditions in the mines and customary procedure for the adjustment of workers' grievances. He shall recognize the right of the workers to continue their membership in any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, provided that such concerted activities do not interfere with the operations of the mines.

8. Possession of any mine or mines taken under this order shall be terminated by the Secretary of the Interior as soon as practicable, but in no event more than sixty days after the restoration of the productive efficiency of any such mine or mines prevailing prior to the taking of possession thereof.

HARRY S. TRUMAN

THE WHITE HOUSE,

May 21, 1946.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 781

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent

No. 782

JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

WELLY K. HOPKINS,
EDMUND BURKE,
T. C. TOWNSEND,
HARRISON COMBS,
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

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vs.

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PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

To the Honorable the Justices of the Supreme Court of the United States:

Petitioners, defendants below, pray that writs of certiorari issue to review the judgments of the District Court of the United States for the District of Columbia, entered in the case of *United States of America v. United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as President of the United Mine Workers of America.* While the case was pending in the United States Court of Appeals for the District of Co-

lumbia on appeals by petitioners, respondent petitioned this Court for writs of certiorari which were granted on December 9, 1946.

Summary Statement of Matter Involved.

These are contempt proceedings growing out of alleged violations of temporary restraining orders issued by the District Court of the United States for the District of Columbia. On November 18, 1946, the District Court, without notice or hearing, issued a temporary restraining order to expire at 3:00 o'clock P. M., on November 27, 1946, and set the time for hearing plaintiff's motion for preliminary injunction at 10:00 A. M. on November 27, 1946 (R. 60).[1]

On November 21, 1946, the District Court issued a rule to show cause why petitioners should not be punished for contempt of court, and ordered a trial be held at 10:00 A. M. on November 27, 1946, in the event that it shall have been found by returns due on November 25th that petitioners had not sufficiently purged the alleged contempt (R. 72).

Pursuant to the rule to show cause, petitioners appeared in court on November 25th and, through counsel, denied the jurisdiction of the District Court to have issued the temporary restraining order (R. 503).

On November 26, 1946, petitioners filed a motion to discharge and vacate the rule to show cause (R. 82), asserting, *inter alia*, that the restraining order was void because it was, under the Constitution and statutes of the United States, beyond the jurisdiction of the Court; that civil contempt was not appropriate in the instant case; and that proper procedures for criminal contempt were not being followed.

---

[1] All record references herein made are to the record submitted to this Honorable Court by the Government along with their petitions for writs of certiorari in Nos. 759 and 760.

On November 27, 1946, the District Court, over the objection of petitioners and during the course of argument on petitioners' motion to discharge and vacate the rule, extended the temporary restraining order (R. 160).

On November 29, 1946, the District Court overruled petitioners' motion to discharge and vacate the rule (R. 90).

On December 3, 1946, after trial on the issues raised by the rule to show cause, the District Court found petitioners, United Mine Workers of America and John L. Lewis, individually, guilty of both civil and criminal contempt (R. 90) and, on December 4, 1946, imposed fines of $3,500,000 and $10,000 respectively.

Jurisdiction

The judgments of the District Court were entered on December 4, 1946. On December 5, 1946, petitioners filed notices of appeal in the District Court. On the following day, December 6, 1946, respondent filed the record in the Circuit Court of Appeals for the District of Columbia.[2] On the same day, December 6, 1946, Chief Justice Groner of the Circuit Court, on respondent's motion and without prior notice to petitioners, ordered the Clerk to transmit the original record to this Court.

On the same day, December 6, Respondent petitioned this Court for writs of certiorari (Nos. 759 and 760), which were granted on December 9, 1946.

The jurisdiction of this Court is invoked under the provisions of Section 240 (a) of the Judicial Code, as amended, 28 U. S. C. 347 (a).

---

[2] Counsel for petitioners were telephonically advised by the Clerk of the Circuit Court that respondent filed the record on appeal pursuant to Rule 15 (d) of the said Circuit Court, which provides: "*Appellee may file record.* Should appellant fail to file the record promptly, the appellee in order to expedite the appeal may, upon making the prescribed deposit, file with the clerk of this court the complete record on appeal as soon as it is prepared."

Questions Presented

I. Did the District Court of the United States have jurisdiction, under the First and Thirteenth Amendments to the Constitution of the United States, to issue the temporary restraining order of November 18, 1946?

II. Did the District Court of the United States have jurisdiction or authority, under the Act of March 23, 1932, Ch. 9 (47 Stat. 70, 29 U. S. C. 101-115), and under the Act of October 15, 1914, Ch. 323, Sec. 20 (38 Stat. 738, 29 U. S. C. 52), to issue the temporary restraining order of November 18, 1946?

III. Did the District Court of the United States have jurisdiction to extend the *ex parte* temporary restraining order of November 18, 1946, without the consent of the defendants below?

IV. Is a temporary restraining order, issued without jurisdiction or authority, a nullity which can be disregarded with impunity? Assuming it cannot be so disregarded, was it not mandatory in these cases to have a trial by jury?

V. Was the rule to show cause in this case, supported as it was by an affidavit based on hearsay, belief and information, and failing to describe the proceeding as being in criminal contempt, and not being an independent proceeding, sufficient to sustain a judgment in criminal contempt?

VI. Were the status and interest of respondents in this case such as to permit a judgment in civil contempt?

VII. Did the Court below err in admitting prejudicial and irrelevant testimony during the trial on the rule to show cause?

VIII. Can petitioner, United Mine Workers of America, an unincorporated Association, be held responsible for the allegedly wrongful and criminal acts of any individual officer, member or agent in the absence of clear proof of actual

participation in, or actual authorization of, such acts, or ratification of such acts after actual knowledge thereof?

IX. Are the fines imposed on petitioners excessive and are they repugnant to the Fifth and Eighth Amendments to the Constitution of the United States?

X. May civil and criminal contempts be tried simultaneously under a single rule to show cause?

Reason for Granting the Writs

This Honorable Court having granted Respondent's petition for writs in cases Nos. 759 and 760 under the unique and rarely utilized provisions of Section 240 (a) of the Judicial Code as amended, the true appellants, Petitioners herein, have no means other than this petition to present the questions and raise the issues they desire this Court to consider.

Conclusion

WHEREFORE, Petitioners respectfully pray that this petition be granted.

WELLY K. HOPKINS,
EDMUND BURKE,
T. C. TOWNSEND,
HARRISON COMBS,
M. B. BOIARSKY,
Counsel for United Mine Workers of America, John L. Lewis, Individually, John L. Lewis, President, United Mine Workers of America.

Of Counsel:
JOSEPH A. PADWAY.
HENRY KAISER.
JAMES A. GLENN.

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CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 811

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA,

Petitioners,

vs.

UNITED STATES OF AMERICA,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

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vs.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

To the Honorable the Justices of the Supreme Court of the United States:

Petitioners, defendants below, pray that a writ of certiorari issue to review the judgments of the District Court of the United States for the District of Columbia, entered in the case of *United States of America* v. *United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as President of the United Mine Workers of America*, granting a temporary restraining order, an order extending the same, and granting a preliminary injunction, as hereinafter referred to, which

case is now pending in the United States Court of Appeals for the District of Columbia on appeal by petitioners.

Opinion Below

The United States District Court did not file any written opinion in connection with the granting of said orders. Review is sought of the judgment of the United States District Court for the District of Columbia entered on December 4, 1946, granting a preliminary injunction against petitioners, and of the order of said Court on the 18th day of November, 1946, granting a temporary restraining order against petitioners, and of the order of said Court entered on November 27, 1946, extending said temporary restraining order. (The record in this cause, except for the Notice of Appeal herein, is identical with the record in Causes 759 and 760 in which petitions for certiorari were granted by this Court, and which record is now on file in this Court.)

Summary Statement of Matters Involved

These are proceedings for restraining orders and preliminary injunction in the District Court of the United States for the District of Columbia. On November 18, 1946, the District Court, without notice or hearing, issued a temporary restraining order to expire at 3:00 o'clock P. M. on November 27, 1946, and set the time for hearing plaintiff's motion for preliminary injunction at 10:00 A. M. on November 27, 1946 (R. 60).[1]

On November 27, 1946, the District Court, over the objection of petitioners, extended the temporary restraining order (R. 160).

On December 4, 1946, the District Court granted the preliminary injunction against petitioners (R. 102 and R. 85).

[1] All record references herein made are to the record submitted to this Honorable Court by the Government along with their petitions for writs of certiorari in Nos. 759 and 760.

Jurisdiction

The said orders of the District Court were entered on December 4, 1946, November 27th and November 18, 1946.

On December 19, 1946, petitioners filed notice of appeal in the District Court, and said notice was forwarded to the Clerk of the Court of Appeals. The case has not been heard, submitted to, or decided by the Court of Appeals. The jurisdiction of this Court is invoked under the provisions of Section 240 (a) of the Judicial Code, as amended, 28 U. S. C. 347 (a), and Judicial Code, Section 129; Title 28, U. S. C. A. Sec. 227, and Act of March 23, 1932, c. 90, Sec. 10, 47 Stat. 72, Title 29, U. S. C. A. Sec. 110.

Questions Presented

1. Did the District Court of the United States have jurisdiction under the First and Thirteenth Amendments to the Constitution of the United States to issue the temporary restraining order of November 18, 1946, to extend the said temporary restraining order on November 27, 1946, and to issue the preliminary injunction on December 4, 1946?

2. Did the District Court of the United States have jurisdiction or authority under the Act of March 23, 1932, Ch. 90 (47 Stat. 70, 29 U. S. C. 101-115), and under the Act of October 15, 1914, Ch. 323, Sec. 20 (38 Stat. 738, 29 U. S. C. 52), to issue the temporary restraining order of November 18, 1946, and to extend the said restraining order on November 27, 1946, and to issue the preliminary injunction on December 4, 1946?

Reasons for Granting the Writ

1. The questions herein presented are involved in the questions presented in Causes Nos. 781 and 782 (certiorari heretofore granted). The public interest will be promoted

by prompt settlement of the questions involved, since they relate to the issues raised by Causes Nos. 759, 760, 781 and 782, now pending in this Court.

2. Section 240 (a) of the Judicial Code, as amended, specifically authorizes issuance of writ of certiorari "upon the petition of any party," and this Court has said "that the sole essential of this Court's jurisdiction to review is that there be a case pending in the Circuit Court of Appeals." (*Gay* v. *Ruff*, 292 U. S. 25, 30.)

3. Rule 39 provides for proceedings to bring up to this Court on writ of certiorari a case pending in the Circuit Court of Appeals or the United States Court of Appeals for the District of Columbia before judgment is given in such Court.

Conclusion

WHEREFORE, Petitioners respectfully pray that this petition be granted.

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CHARLES ELMORE CROPLEY
CLERK

Nos. 759, 760, 781, 782, and 811

In the Supreme Court of the United States

OCTOBER TERM, 1946

THE UNITED STATES OF AMERICA, PETITIONER

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, RESPONDENTS

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, PETITIONERS

v.

UNITED STATES OF AMERICA, RESPONDENT

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1946

Nos. 759, 760, 781 and 782

THE UNITED STATES OF AMERICA, PETITIONER

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, RESPONDENTS

No. 811

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, PETITIONERS

v.

UNITED STATES OF AMERICA, RESPONDENT

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinions of the District Court on various aspects of the case (R. 202–204; 328–329) have

not been officially reported. The Court's findings of fact and conclusions of law in the contempt proceedings (R. 90–99) are set forth with supporting references to the record in an appendix to this brief (pp. 109–127).

JURISDICTION

Judgments and sentences for contempt and a preliminary injunction were entered December 4, 1946, in the District Court. On December 5, 1946, defendants[1] filed notices of appeal from the judgments of contempt and, on December 19, 1946, notice of appeal from the restraining orders that were issued November 18, 1946 and November 27, 1946, and from the preliminary injunction. On December 6, 1946, pursuant to order of the District Court (R. 510), on motion of plaintiff (R. 511), the original record was transmitted to the Court of Appeals for the District of Columbia, and the appeals from the judgments of contempt were docketed as Nos. 9436 and 9437. On the same day, pursuant to order of the court below, on motion of plaintiff the original record on those appeals was transmitted to this Court; and plaintiff filed its petition in Nos. 759 and 760 for writs of certiorari to Nos. 9436 and 9437 below, which this Court granted on December 9,

[1] For convenience defendants in the District Court are referred to herein as defendants and the United States is referred to as plaintiff since both parties are respondents and petitioners here.

1946. On December 12, 1946, defendants filed their petitions in Nos. 781 and 782 for writs of certiorari to Nos. 9436 and 9437 below, which this Court granted on December 16, 1946. On December 21, 1946, defendants' appeal from the restraining orders and the preliminary injunction was docketed in the court below as No. 9453; and defendants filed their petition in No. 811 for a writ of certiorari to No. 9453 below, which this Court granted on December 23, 1946. The cases have not been heard, considered, or decided by the Court of Appeals. The jurisdiction of this Court rests upon the provisions of Section 240 (a) of the Judicial Code, as amended (28 U. S. C. 347 (a)).

QUESTION PRESENTED BY PLAINTIFF IN NOS. 759 AND 760

Did the District Court in this case have the power under the Constitution and Statutes by the issuance of a temporary restraining order to prevent irreparable injury to the people of the United States, to prevent interference with sovereign functions of the United States, and to protect the District Court's jurisidiction to decide questions of law and fact incident thereto?

QUESTIONS PRESENTED BY DEFENDANTS IN NOS. 781 AND 782

I. Did the District Court of the United States have jurisdiction, under the First and Thirteenth Amendments to the Constitution of the United

States, to issue the temporary restraining order of November 18, 1946?

II. Did the District Court of the United States have jurisdiction or authority, under the Act of March 23, 1932, Ch. 90 (47 Stat. 70, 29 U. S. C. 101–115), and under the Act of October 15, 1914, Ch. 323, Sec. 20 (38 Stat. 738, 29 U. S. C. 52), to issue the temporary restraining order of November 18, 1946?

III. Did the District Court of the United States have jurisdiction to extend the *ex parte* temporary restraining order of November 18, 1946, without the consent of the defendants below?

IV. Is a temporary restraining order, issued without jurisdiction or authority, a nullity which can be disregarded with impunity? Assuming it cannot be so disregarded, was it not mandatory in these cases to have a trial by jury?

V. Was the rule to show cause in this case, supported as it was by an affidavit based on hearsay, belief and information, and failing to describe the proceeding, as being in criminal contempt, and not being an independent proceeding, sufficient to sustain a judgment in criminal contempt?

VI. Were the status and interest of respondents [plaintiff] in this case such as to permit a judgment in civil contempt?

VII. Did the Court below err in admitting prejudicial and irrelevant testimony during the trial on the rule to show cause?

VIII. Can petitioner, United Mine Workers of America, an unincorporated association, be held responsible for the allegedly wrongful and criminal acts of any individual officer, member or agent in the absence of clear proof of actual participation in, or actual authorization of, such acts, or ratification of such acts after actual knowledge thereof?

IX. Are the fines imposed on petitioners excessive and are they repugnant to the Fifth and Eighth Amendments to the Constitution of the United States?

X. May civil and criminal contempts be tried simultaneously under a single rule to show cause?

QUESTIONS PRESENTED BY DEFENDANTS IN NO. 811

1. Did the District Court of the United States have jurisdiction under the First and Thirteenth Amendments to the Constitution of the United States to issue the temporary restraining order of November 18, 1946, to extend the said temporary restraining order on November 27, 1946, and to issue the preliminary injunction on December 4, 1946?

2. Did the District Court of the United States have jurisdiction or authority under the Act of March 23, 1932, Ch. 90 (47 Stat. 70, 29 U. S. C. 101–115), and under the Act of October 15, 1914, Ch. 323, Sec. 20 (38 Stat. 738, 29 U. S. C. 52), to issue the temporary restraining order of November 18, 1946, and to extend the said restraining order on

November 27, 1946, and to issue the preliminary injunction on December 4, 1946?

CONSTITUTIONAL PROVISIONS, STATUTES, AND EXECUTIVE ORDER INVOLVED

The following Constitutional provisions, statutes, and executive order are set forth in the Appendix hereto at pp. 82-108:

(1) Constitution, Article III, Sections 1 and 2;

(2) Judicial Code, Section 24 (1) (28 U. S. C. 41 (1));

(3) The Federal Declaratory Judgment Act (Act of June 14, 1934, as amended, Judicial Code, Section 274d (28 U. S. C. 400));

(4) The War Labor Disputes Act (Act of June 25, 1943, c. 144, 57 Stat. 163 (2 U. S. C. Supp. V, 251, 50 U. S. C. App., Supp. V, 309, 1501-1511));

(5) The pertinent portion of Section 9 of the Selective Training and Service Act of 1940 as amended (Act of September 16, 1940, c. 720, 54 Stat. 885, (50 U. S. C. App. 301 *et seq.*), as amended by Act of June 25, 1943, 57 Stat. 163 (50 U. S. C. App. Supp. V, 1501 *et seq.*));

(6) The Norris-LaGuardia Act (Act of March 23, 1932, c. 90, 47 Stat. 70 (29 U. S. C. 101-115));

(7) The Clayton Act (Act of October 15, 1914, c. 323, Section 20, 38 Stat. 738 (29 U. S. C. 52));

(8) Executive Order No. 9728, of May 21, 1946, authorizing the Secretary of the

Interior to take over the bituminous coal mines.

STATEMENT

On or about April 1, 1946, practically the entire body of coal miners represented by the United Mine Workers of America employed in the bituminous coal mines of the nation engaged in a work stoppage. This resulted in a cessation of the flow of bituminous coal from the mines to the railroads, shipping, public utilities, and industrial plants of the nation, and to facilities owned and operated by the United States which require coal for their operation (R. 1–2, 90–91, 289, 335, 486).

On May 21, 1946, the President of the United States, finding that the production of bituminous coal was required for the war effort and was indispensable for the continued operation of the national economy during the transition period from war to peace, issued Executive Order 9728 "in the interest of the war effort and to preserve the national economic structure in the present emergency" (R. 2, 9–10, 207, 335–336). This Executive Order, issued pursuant to powers vested in the President by the Constitution and laws of the United States, including the War Labor Disputes Act, authorized and directed the Secretary of the Interior to take possession of all bituminous coal mines, the operations of which were interrupted or threatened with interruption because of work stoppages, and to operate them or arrange for their operation in such manner as he might deem

necessary, and to do all things necessary for, and incidental to, the production, sale, and distribution of the coal produced, prepared, or handled by said mines (Ibid.).[2]

The Secretary of the Interior forthwith took possession of practically all of the bituminous coal mines of the Nation (R. 2, 208, 210, 336–342), and since that time the United States has been and now is in possession of the mines (R. 2, 36, 211, 261, 289, 345–398, 486).

In accordance with the authorization contained in Executive Order 9728, the Secretary of the Interior entered into negotiations with representatives of the United Mine Workers of America, looking toward changes in the terms and conditions of employment in the mines. As a consequence, an agreement, commonly referred to as the Krug-Lewis Agreement, was executed on May 29, 1946, by the Secretary of the Interior, as Coal Mines Administrator, and John L. Lewis, as President of the United Mine Workers of

[2] Executive Order 9728, in Section 2, directed the Secretary to operate the mines in accordance with terms and conditions of employment in effect at the time of taking possession, "subject to the provisions of Section 5 of the War Labor Disputes Act." Section 3 of the Executive Order authorized the Secretary, pursuant to Section 5 of the War Labor Disputes Act, following such negotiations with representatives of the employees as he might deem necessary, to apply to the National Wage Stabilization Board for appropriate changes in the terms and conditions of employment for the period of the operation of the mines by the Government (Ibid.).

America (R. 3, 10–15, 211, 399–403, 404). On May 31, 1946, upon application made to it by the United States (R. 3, 211, 403), the National Wage Stabilization Board issued an order, pursuant to Section 5 of the War Labor Disputes Act, approving the substantial changes in wages and other terms and conditions of employment contained in the Krug-Lewis Agreement, and directing that they put into effect at the mines. This order was approved by the President of the United States on May 31, 1946 (R. 3, 19–21, 211, 404–405). Thereafter the mine workers were instructed by the defendants to return to their work, and operations in the mines were resumed under the new terms and conditions.[3]

The Krug-Lewis Agreement, by its terms, "covers for the period of Government possession the terms and conditions of employment in respect to all mines in Government possession which were as of March 31, 1946, subject to the National Bitumi-

[3] Section 5 of the War Labor Disputes Act, to the extent here relevant, provides that the Government agency operating a mine, or a majority of the employees of such mine, or their representatives, may apply to the Board for a change in wages or other terms or conditions of employment in such mine. After such hearings and investigations as it deems necessary, the Board may order any changes in such wages, or other terms and conditions, which it deems to be fair and reasonable and not in conflict with any Act of Congress or any Executive order issued thereunder. Any such order of the Board shall, upon approval by the President, be complied with by the Government agency operating such mine.

nous Coal Wage Agreement, dated April 11, 1945 and, "Except as amended and supplemented herein," carried forward the terms and conditions of various agreements which had existed between the defendant Union and the coal mine operators, including the National Bituminous Coal Wage Agreement of April 11, 1945 (R. 11, 211, 399).

On October 21, 1946, defendants sent a letter to the Secretary of the Interior discussing certain interpretations of the Secretary under the Krug-Lewis Agreement (R. 4, 26–27, 217, 408–409). This letter asserted that Section 15 of the National Bituminous Coal Wage Agreement (see R. 18, 217) had been carried forward into the Krug-Lewis Agreement; that under that section either party might give ten days' notice in writing of a desire for a negotiating conference which the other party was required to attend; that at the end of fifteen days after the beginning of the conference, either party might give to the other a written notice of termination, to be effective five days after receipt; and that accordingly a joint conference was requested "for the purpose of negotiating new arrangements affecting wages, hours, rules, practices, differentials, inequalities and all other pertinent matters affecting or appertaining to the National Bituminous Coal industry." It was suggested that the conference be held at Washington, D. C., on November 1, 1946 (R. 217, 409).

On October 22, 1946, the Coal Mines Administration advised defendants by letter (R. 4, 27–29, 217,

410–411) that, for various reasons, Section 15 of the National Bituminous Coal Wage Agreement had not been carried forward into the Krug-Lewis Agreement; that accordingly the defendants' letter of October 21, 1946 could not be treated as a notice or request given pursuant to any existing contract provision; and that the Krug-Lewis Agreement was considered to be in full force and effect. It was further stated that the Coal Mines Administration was nevertheless ready at any time "to discuss matters affecting the operation of the bituminous coal mines under the Krug-Lewis Agreement * * *" (R. 28, 411). After further exchanges of correspondence (R. 4–5, 29–30, 220, 411–413), conferences were held in Washington, D. C., attended by representatives of the Government and of the United Mine Workers of America, beginning on November 1, 1946, and continuing, from time to time, to and including November 14, 1946. These conferences were without prejudice to the contentions of the parties respecting the right claimed by defendants to terminate the Krug-Lewis Agreement by unilateral notice (R. 5, 29, 30, 220–223, 301–302, 412–413). During the course of the meeting on November 11, 1946, the representatives of the defendant union for the first time advanced specific proposals for changes in the wages and other terms and conditions of employment in effect at the mines. Those proposals included changes of a far-reaching nature which would have involved a substantial increase in

the cost of production of coal (R. 5, 221–223, 237, 298–299, 305).

The Government specifically pointed out to the representatives of the Union on the first and again on the last day of these meetings that they had ready relief and a remedy under Section 5 of the War Labor Disputes Act to apply to the Wage Stabilization Board for any fair and reasonable changes in the wages or terms and conditions of employment. It was further pointed out that the Government was looking forward to the earliest practicable return of the coal mines to private operation, and that both the Union and the operators had stated that they too wanted early termination of Government possession. The Government accordingly suggested that the defendants and the owners of the coal mines, who were then desirous of commencing negotiations, discuss the matter. (R. 30–31, 222, 298, 482—Krug letter.)

The defendants, however, refused to negotiate with the operators of the coal mines and failed to avail themselves of the statutory remedy provided in Section 5 of the War Labor Disputes Act. (R. 30–31, 298, 303–305, 482–Ex. 39, 493–494.) Instead on November 15, 1946, defendants sent a letter to the Secretary of the Interior stating (R. 5–6, 34, 64, 223, 413):

> Fifteen days having now elapsed since the beginning of said conference, the United Mine Workers of America, exercising its option, hereby terminates said Krug-Lewis

agreement as of 12:00 o'clock, P. M., midnight, Wednesday, November 20, 1946.

Upon receipt of this letter, and in reply thereto, the Secretary of the Interior sent a letter to defendants advising that "you have no power, under the Krug-Lewis Agreement of May 29 or under the law, by unilateral declaration to terminate the contract which by its terms 'covers for the period of Government possession the terms and conditions of employment.'" (R. 6, 34–35, 482–Ex. 39.) However, the defendants sent to the members of the Union a letter which reproduced in full the letter of November 15, 1946, purporting to terminate the Krug-Lewis Agreement. The letter addressed to the members of the United Mine Workers was stated to be for their "official information." In addition defendants released to the public press copies of their letter of November 15, 1946 addressed to the Secretary of the Interior. (R. 223, 279–282, 284–286, 484–485.)

It is and has been the long-established policy of the United Mine Workers of America, rigidly adhered to by its members, that miners will not work in the mines in the absence of a contract and that, upon the mere declaration by the United Mine Workers of America or its president that no contract exists, the miners cease work. No other stoppage order ever goes out. Defendants' notice of termination of the Krug-Lewis Agreement effective November 20,

1946 was in fact, therefore, an order to strike. (R. 6, 37, 282–283, 483.)

On November 18, 1946, the United States filed a verified complaint in the District Court against the United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as president of the United Mine Workers of America. (R. 1–51.) The complaint, after setting forth the facts substantially as outlined above and the irreparable injury to the people of the United States which would result from the threatened work stoppage in the bituminous coal mines and for which there was no adequate remedy at law, prayed for a declaratory judgment. The United States sought a determination that defendants had no right or authority, by unilateral action, to terminate the Krug-Lewis Agreement, and that the issuance of notice by defendants to the coal miners that the Krug-Lewis Agreement was terminated or terminable by defendants or that there was no contract in effect at the bituminous coal mines in the Government's possession was unlawful, and void. (R. 7–8.) The complaint also prayed for a preliminary injunction against such action by defendants, pending final determination of the case, and for a temporary restraining order, pending hearing on the preliminary injunction.

Simultaneously with the filing of the complaint, the United States filed supporting affidavits setting forth specifically the irreparable injury

which would result to the United States from a work stoppage in the mines.[4]

It was shown that the public utility and railroad systems of the nation, the industrial plants, and the shipping industry would be paralyzed; that widespread unemployment would necessarily follow; that the health and welfare of the nation would be gravely threatened; that the effectiveness of the nation's military and naval forces, particularly those abroad, would be seriously threatened; that foreign coal commitments could not be met; and that overseas shipments of food and other supplies and the entire rehabilitation program in occupied countries would be jeopardized.

On the basis of the verified complaint and on the affidavits the District Court issued a temporary restraining order which in substance directed that the defendants withdraw the notice purporting to terminate the Krug-Lewis Agreement. The restraining order, by its terms, was to expire on November 27, 1946, unless extended, and the motion for a preliminary injunction was set for hearing on that day (R. 60–61).

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[4] Affidavits were submitted by the Secretary of the Interior (R. 36–38); the Secretary of the Navy (R. 39); the Secretary of War (R. 40); the Administrator of the Civilian Production Administration (R. 41–43); the Managing Director of Ship Operations, United States Maritime Commission (R. 44–46); the Chairman of the Federal Power Commission (R. 46–48); the Acting Surgeon General of the United States Public Health Service (R. 48–49); and the Director of the Office of Defense Transportation (R. 49–51).

Defendants were served on November 18, 1946, with copies of the complaint, affidavits, Points and Authorities in support of the application for the temporary restraining order, and the temporary restraining order (R. 61, 63–64). They took no steps to vacate the temporary restraining order. Nor did they comply with it (R. 503–505, see R. 313–314). Consequently, on or about November 20, 1946, a strike in the bituminous coal mines in the Government's possession went into effect, and the production of bituminous coal practically ceased (R. 67–68, 289–292, 487).

On November 21, 1946, the United States filed a petition in the district court alleging that defendants had wilfully, unlawfully, and deliberately disobeyed and violated the temporary restraining order, and praying for a rule to show cause why defendants should not be punished for contempt of court (R. 66–72). A rule was granted requiring defendants to appear on November 25, 1946, and show cause why they should not be punished for contempt. The rule directed that if, upon the return, it should be found that the alleged contempt had not been sufficiently purged, a trial would be held on November 27, 1946, at which time defendants would be tried on charges of contempt by the court, sitting with an advisory jury, unless such jury were waived by defendants (R. 72–73).

On the return day, defendants appeared and made a return to the rule to show cause as follows (R. 313, 503):

The defendants and each of them respectfully state to the Court that they and each of them, since the giving of said notice of November 15, 1946, since the issuance of Your Honor's temporary restraining order of November 18, have done no act nor spoken any word pertaining to said notice or in reference to permitting if to continue in effect.

The status of the notice and the position of each of the defendants in reference thereto remains today in the status which existed at the time of its giving and at all times subsequent thereto.

The defendants and each of them, Your Honor, therefore respectfully say to this Court that the situation with respect to such notice of November 15, 1946, for the reasons herein stated remains unchanged.

The defendants and each of them respectfully deny the jurisdiction of this Honorable Court to have issued the temporary restraining order and the rule to show cause issued thereunder.

On November 26, 1946, the day before the trial, defendants served a motion to discharge and vacate the rule to show cause (R. 82–85), contending (1) that the temporary restraining order was void because the case grew out of a labor dispute, and the court was without jurisdiction over the subject matter under the provisions of the Norris-LaGuardia Act and Section 20 of the Clayton Act; (2) that equity will not intervene in a case charging violation of the War Labor Disputes Act; (3) that the petition for the rule to show cause

charged a criminal contempt and the strict rules of criminal procedure must be followed; and (4) that the temporary restraining order was void because it violated the First, Fifth, and Thirteenth Amendments to the Constitution of the United States.

This motion was argued at length on November 27, 1946,[5] and again on November 29, 1946 (R. 111–201). At the conclusion of the argument, defendants' motion was overruled (R. 90). District Judge Goldsborough delivered an opinion holding that the Norris-LaGuardia Act and the Clayton Act did not apply to this action brought by the United States, that the court had power to maintain the *status quo* until there could be a judicial determination concerning the contract, that the petition and rule to show cause, under the circumstances, satisfied the requirements of criminal procedure, and that the temporary restraining order violated no constitutional rights of defendants (R. 202–205). Defendants thereupon pleaded not guilty, waived the advisory jury, and the case proceeded to trial before the court (R. 205). The Government produced eight witnesses, all of whom were subject to cross-examination by the defendants. Defendant Lewis did not take the stand, and no witness was called by either of the defendants.

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[5] At 2:45 p. m. on November 27, 1946, during this argument and in view of the pendency of the hearing, the temporary restraining order, previously issued, was extended "for cause" (R. 85–86, 158–161).

After the trial (R. 205–319)* the court, on December 3, 1946, made findings of fact and conclusions of law (R. 90–99, 316).

The court found that the above facts had been established beyond a reasonable doubt and, in addition, that defendants, by permitting the notice of November 15, 1946, purporting to terminate the Krug-Lewis Agreement, to remain outstanding, (1) instigated, induced, and encouraged the workers at the mines in the possession of the United States to interfere by strike, etc., with the operation of said mines, (2) completed the calling of a strike at said mines, (3) interfered with and obstructed the exercise by the Secretary of the Interior of his functions under Executive Order 9728 and the War Labor Disputes Act, and (4) interfered with the court's jurisdiction and impaired and obstructed the determination of the case by the court. The court also found that bituminous coal was indispensable for the continued operation of the national economy during the transition period from war to peace and that the work stoppage had caused and did continue

* Before the trial, defendants were apprised of the fact that they were charged with both criminal and civil contempt (R. 66–68, 72–73, 82, 84, 196–198, 204). They were also informed in advance of the names and identities of the witnesses to be called by the United States (R. 241–242). Defendants' counsel stated in the district court that they were not "accusing the Government with any lack of liberality with respect to any information, or with a lack of opportunity to meet their contentions. We know what they are." (R. 267.)

to cause irreparable injury to the United States, to the people of the United States and to the industry and economy of the United States.

The court concluded (R. 98–99) that in seizing and operating the mines under Executive Order 9728, the United States was at all times exercising its sovereign functions, derived from the Constitution and laws of the United States, that defendants by their action had obstructed and interfered with the exercise of these sovereign functions, that defendants had unlawfully coerced, instigated, induced and encouraged the mine workers at the mines in the Government's possession to interfere by strike with the operation of those mines, that defendants by their action had deliberately and wilfully disobeyed and violated the temporary restraining order, and that defendants had committed civil contempt and were guilty of criminal contempt of court beyond a reasonable doubt.

Thereafter, on December 4, 1946, the court imposed a fine on defendant United Mine Workers of America in the amount of $3,500,000 and on defendant John L. Lewis in the amount of $10,000 (R. 101–102, 329); and, on the basis of all the prior proceedings and after making specific findings, granted the Government's motion for a preliminary injunction (R. 102–109).

SUMMARY OF ARGUMENT

I

The pattern of the War Labor Disputes Act is plain. It provided reasonable and fair machinery for the settlement of industrial disputes, including as a last resort governmental seizure with consequent procedures for the establishment of fair changes in the wages and working conditions, to be made on the application of the Government or the workers. The Act also declared specifically as a national policy that it was unlawful by inducing a strike to interfere with the operation of plants or mines seized by the Government.

For five months after seizure of the coal mines in 1946, and after the making of a new labor agreement which, with approval under the War Labor Disputes Act, gave substantial new benefits to the miners, there was peace in the coal mines. Then, however, the defendants asserted a right to terminate the labor agreement which the Government denied because the agreement was by its terms to cover the entire period of Government possession. To resolve the disputed legal question the Government filed this suit.

The proposed unilateral termination of the agreement by the defendants was a serious threat to the country, because, under long standing policy of the defendants and of the miners, a mere declaration by defendants that no contract

existed was equivalent to a strike call. In view of the gravity of the threat to the country, as fully detailed in the findings of the District Court, the United States sought temporary injunctive relief until judicial disposition of the controversy. The necessity for such relief was clear and the propriety of such action, in view of the circumstances of this case, was fully supported by the basic principles unanimously enunciated in the only analagous case ever considered by this Court. *In re Debs,* 158 U. S. 564. Indeed, the historic power of a court of equity to issue a restraining order in a case such as this was not denied by defendants who contended rather that the Norris-LaGuardia and Clayton Acts immunized them.

II

The Norris-LaGuardia and Clayton Acts did not immunize the defendants nor place them beyond the reach of a court of equity in a case such as this. This Court has pointed out that the Norris-LaGuardia Act explicitly restated the public policy of the United States in 1932 in regard to industrial conflict, and redefined the area of such conflict that had best be left to economic forces and the pressure of public opinion and not subjected to the judgment of courts. *United States* v. *Hutcheson,* 312 U. S. 219, 231. It appears from the legislative history of the Norris-LaGuardia Act that it was not intended to apply to a case such as this. Moreover, the later tempo-

rary War Labor Disputes Act, with its express declaration of illegality of certain labor conduct, must be read with the Norris-LaGuardia Act as a harmonizing text.

Neither the policy, purpose, nor language of the Norris-LaGuardia Act extends to this case. It does not expressly include the United States and its legislative sponsors disavowed any intention so to do. Moreover, the language of the statute is wholly inappropriate to comprehend the United States.

Whatever immunity the defendants might have had under the Norris-LaGuardia Act, and in our opinion they had none, their action in this case was clearly unlawful, in view of the later War Labor Disputes Act.

III

Even if this Court should now decide, in this case of first impression, that the Norris-LaGuardia and Clayton Acts deprived the District Court of jurisdiction to grant injunctive relief here, that court nevertheless was properly exercising judicial power when the restraining order was issued. The defendants did not comply with the order. Rather the defendants made themselves the judges of its validity and by their action inflicted very substantial damage upon the United States.

Such conduct this Court unanimously condemned in *United States* v. *Shipp*, 203 U. S. 563, pointing out that if a court has no jurisdiction

to entertain a given case, the court alone, and not a party, has the right to decide that question. Similarly, in *Howat* v. *Kansas,* 258 U. S. 181, it was held that an injunctive order must be obeyed, however erroneous the action of the court may be, since it is for the court of first instance to determine the validity of an applicable law involved in the proceeding. In *Carter* v. *United States,* 135 F. 2d 858 (C. C. A. 5), this rule was specifically applied in connection with a restraining order in a labor dispute, to sustain a contempt conviction although there the court held that by reason of the Norris-LaGuardia Act there was no jurisdiction to have issued the restraining order. In that case the Circuit Court of Appeals said that the District Court had a new question of jurisdiction to solve and it alone had authority in the first instance to decide whether or not the case arose under the Norris-LaGuardia Act and that failure to comply with the order constituted a contempt.

At best, therefore, defendants' contention concerning the Norris-LaGuardia Act posed a question for decision by the District Court, and regardless of the ultimate decision of that question the court had power both to grant a temporary restraining order, in the circumstances here present, and to punish for contempt of it.

IV

The constitutional rights of the defendants were fully protected. The procedure in initiating the

contempt trial was correct and the defendants were fully informed of the nature of the charges against them, which consisted of civil and criminal contempt, both properly triable in a single proceeding. Moreover, the defendants received the benefit of every right accorded in criminal contempt cases, including full cross-examination of the government's witnesses, freedom from self-incrimination, and proof of guilt beyond a reasonable doubt.

There can be no question of agency, under Section 6 of the Norris-LaGuardia Act or otherwise, in connection with the Union's guilt. The Union itself was under a duty imposed by a court order directed to it, and of which it had full notice, to take action which it could have taken properly through any officer or agent of the Union—its failure so to act constituted a contempt.

The defendants were not tried by jury but they raised no issue of fact, did not seek a jury trial, did not object to trial by the court alone, and were not entitled to a jury trial. In substance the defendants' position was to admit the facts but to urge only questions of law, principally the question concerning the applicability of the Norris-LaGuardia Act.

The fine imposed on each defendant was, under the circumstances of this case and on the evidence of damage to the United States contained in this record, appropriate, and within the ability of each of the defendants to pay.

The mandatory direction to the defendants to withdraw the strike notice no more imposed involuntary servitude on them or impaired their freedom of speech than would a direction by the court to the defendants to ring a bell or flash a light which might be a signal to the miners to return to work. The power of the court to direct such action, where necessary, has been uniformly upheld. *Virginian Ry.* v. *Federation,* 300 U. S. 515. Moreover, it is well settled that in the interests of the administration of justice a person may be compelled by a court to speak, if self-incrimination or privilege is not involved, even though the person would prefer to remain silent. *Howat* v. *Kansas,* 253 U. S. 181.

In any event there can be no serious question that the orders were constitutionally made in this case, for, the danger to the life of the community from the failure of the defendants to withdraw the strike notice and from their instigation of a strike, met the most rigid test of "clear and present danger." See *Gompers* v. *Bucks Stove & Range Co.,* 221 U. S. 418, cited with approval by Mr. Justice Holmes in *Schenck* v. *United States,* 249 U. S. 47 52.

ARGUMENT

I

TRADITIONAL EQUITABLE PRINCIPLES REQUIRED THE GRANTING OF ANCILLARY INJUNCTIVE RELIEF BY THE DISTRICT COURT IN THIS CASE

1. *The Background*

On December 17, 1941, ten days after Pearl Harbor, President Roosevelt convened a conference of representatives of labor and of industry to consider what steps should be taken or were necessary to strengthen the machinery for the prompt and peaceful settlement of labor disputes and for ensuring full war production during the settlement of disputes. The National War Labor Board was established on January 12, 1942, by Executive Order 9017 (7 F. R. 237),[1] following unanimous agreement by that conference.

The majority of the cases considered by the War Labor Board were adjusted on the basis of the Board's decisions, but in several instances of the most serious character the decisions of the Board were not accepted by the disputants and the cases were required to be referred to the President. When in such cases the President, after an investigation, determined that the parties had refused to settle their dispute by negotiation and

[1] The information with respect to the War Labor Board is taken from the Hearings before the Select Committee of the House of Representatives to Investigate the Montgomery Ward Seizure, 78th Cong., 2d Sess.

agreement and that the national interest required the continued operation of the facilities involved, he directed officers of the United States to take possession and operate the plant or facilities. In 1942 the President directed the Office of Defense Transportation to take over and operate the Toledo, Peoria and Western Railroad;[8] the Secretary of the Navy to take over a plant of the General Cable Company;[9] the Secretary of War to take over the S. A. Woods Machinery Company.[10] The fourth case arose out of a strike commencing on May 1, 1943, in the bituminous coal mines.

In the latter case the War Labor Board had assumed jurisdiction of the dispute between the United Mine Workers and the coal mine operators, in which an order to strike on May 1, 1943, had been issued by the union. Though the President of the United States had directed the leaders of the union to countermand the strike order, the union failed so to act and the mine workers walked out of the mines on the date fixed. Accordingly, on the same day the Presi-

[8] Executive Order 9108 (7 F. R. 2201). In this case the railroad company refused to comply with a direction of the War Labor Board that a labor dispute be submitted to arbitration, following which a strike occurred.

[9] Executive Order 9220 (7 F. R. 6413). In this instance a labor union had called a strike following its refusal to accept a Board decision denying a general wage increase.

[10] Executive Order 9225 (7 F. R. 6627). Here the takeover followed a refusal by the company to settle a labor dispute on the basis of a War Labor Board directive.

dent directed [11] the Secretary of the Interior to take possession and operate the coal mines.

Subsequent to Government seizure, on May 3, 1943, the president of the United Mine Workers of America announced a "15-day truce" and notified the miners to return to work on May 5, 1943. Production was thus restored for the time being and continued until May 31, 1943. On June 1, 1943, the miners again walked out of the mines. That strike ended on June 7, 1943, with June 20, however, set by the union as a new deadline for a revised wage agreement. Two days before that deadline, the War Labor Board issued a final order in the dispute affecting the bituminous coal industry, extending the previous contract, as already amended by the Board, until March 31, 1943, denying the wage increases as demanded, and disapproving for the time being the demand for "portal to portal" pay. The mine workers again left the pits, and on June 21, 1943, the mines were again practically entirely closed down. The War Labor Board referred the case to the President who, on June 23, 1943, issued a statement terming the walkout intolerable. After further conferences between the Secretary of the Interior and the leaders of the United Mine Workers of America, the union ordered the men to return to their jobs. The union fixed a new deadline, October 31, 1943, for the consummation of a new agreement or another strike.

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[11] Executive Order 9340 (8 F. R. 5695).

The War Labor Disputes Act was enacted by the Congress on June 25, 1943. When the bill was reported to the House of Representatives by its Committee on Military Affairs, on May 11, 1943, the Committee stated (H. R. Rep. No. 440, 78th Cong., 1st Sess., p. 6):

> The legislation is extremely urgent and your committee believes that it should be speedily enacted into law because of the existence of what is commonly known as a truce involving more than a half million workers in the coal mines of the country covering that particular industry in some 37 States of the Union where coal is produced for a multitude of purposes and is essential to the successful prosecution of the war. Without adequate production of coal the war effort would be greatly retarded and it is entirely possible that if the President is not permitted to use his independent discretion under authority of legislation enacted by the Congress, he will be greatly handicapped in the settling of labor disputes and in the continuance of full production of war materials, particularly in the coal industry and in war plants using coal for fuel, including transportation by steam railways. The subject is of such vital importance to the successful continuance of the war effort by the Government that the committee feels that the legislation proposed in the bill should be enacted without delay, and with that in

view, it has reported the bill favorably with the recommendation that it pass.

Though enacted by the 78th Congress, the Act had its antecedents in the 77th Congress. One of its antecedents, S. 2054, was reported favorably by the Senate Committee on the Judiciary, which strongly recommended its enactment (S. Rep. No. 846, 77th Cong., 1st Sess., p. 2):

> The bill is in the national interest. It is a bill for all of the people. It is not a measure in behalf of the employer. It is not a measure in behalf of the employee. It is a measure to proclaim the sovereignty of the United States and all of the people of America. It denies the sovereignty of any individual or any group which may seek to coerce or defy the Government of the United States in the hour of its danger and in the time of its peril.

The pattern of the statute is plain. It created a comprehensive and integrated labor code covering, during the limited life of the act, disputes from their origin through their disposition by the War Labor Board, and providing for presidential seizure in necessary cases. Labor disputes which might lead to substantial interferences with the war effort were to be adjusted, if possible, by collective bargaining or conciliation, failing which they were to be heard and determined by the Board (Sec. 7). Only in the event resolution in that manner proved impossible, was the extreme measure of Government seizure to be employed

(Sec. 3). Once, however, the emergency power of Government possession and operation was called into play, established terms and conditions of employment were to be maintained subject to change only by order of the Board (Secs. 4 and 5). All the powers of the sovereign were to be available in support of the presidential seizure. After the Government take-over, it became unlawful for any person "to coerce, instigate, induce, conspire with, or encourage any person, to interfere, by lock-out, strike, slowdown, or other interruption, with the operation of such plant, mine, or facility" or to aid such an act in any other way (Sec. 6). Any such conduct tending to interfere with the continued operation of properties in the possession of the Government was plainly and unequivocally declared unlawful.[12]

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[12] The War Labor Disputes Act was passed over the veto of President Roosevelt. However, so far as Sections 1 through 7, which established the pattern outlined above, were concerned, he stated (S. Doc. No. 75, 78th Cong., 1st sess., pp. 1–2):

"* * * I am unalterably opposed to strikes in wartime. I do not hesitate to use the powers of Government to prevent them.

"It is clearly the will of the American people that for the duration of the war all labor disputes be settled by orderly procedures established by law. It is the will of the American people that no war work be interrupted by strike or lock-out.

"American labor as well as American business gave their 'no strike, no lock-out' pledge after the attack on Pearl Harbor.

"That pledge has been well kept except in the case of the leaders of the United Mine Workers. For the entire year

For five months after Government seizure of the bituminous coal mines on May 22, 1946, the defendants in this case did not challenge the national policy expressed in the War Labor Disputes Act. The wages and terms and conditions of employment in the mines which had existed prior to the seizure and with which the defendants were dissatisfied had been changed by the Krug-Lewis Agreement and by orders of the National Wage Stabilization Board.[13]

2. *The emergency commencing in October 1946*

In October 1946, however, for the first time defendants asserted a right to terminate the Krug-Lewis Agreement, which right, in the opinion of the Government, the defendants did not possess. In November 1946, the defendants purported to termi-

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of 1942, the time lost by strikes averaged only five one-hundredths of 1 percent of the total man-hours worked. The American people should realize the fact—that 99.95 percent of the work went forward without strikes, and that only five one-hundredths of 1 percent of the work was delayed by strikes. That record has never before been equaled in this country. It is as good or better than the record of any of our allies in wartime.

"But laws are often necessary to make a very small minority of people live up to the standards that the great majority of people follow. Recently there has been interruption of work in the coal industry, even after it was taken over by the Government. I understand and sympathize with the general purpose of the war-disputes bill to make such interruptions clearly unlawful.

"The first seven sections of the bill are directed to this objective." * * *

[13] It may be noted in passing, that the terms and conditions so established were at the time acclaimed by the defendants herein (R. 488).

nate the Krug-Lewis Agreement. Thereupon, to resolve the disputed legal controversy the United States filed suit pursuant to the Federal Declaratory Judgments Act (28 U. S. C. Sec. 400). In this action, which came squarely within the provisions of that statute, the defendants were duly served with process and, accordingly, the District Court had jurisdiction both of the subject matter of the action and of the defendants in the action. This is uncontroverted.

Also not disputed is the fact, abundantly clear from the record, that it has been for years and is the policy of the United Mine Workers of America, rigidly adhered to by its members, that the miners should not work in the mines in the absence of a contract covering terms and conditions of employment, and that upon the mere declaration by either of the defendants that no such contract exists, the miners in a body cease work. At the time of the defendants' declaration that no contract would exist on November 20, 1946, which declaration was widely publicized and brought to the attention of the bituminous coal miners of the Nation, the Government was acutely aware of the injury inflicted upon the people of the country by previous work stoppages in the bituminous coal mines.

That the action of the defendants represented a threat to the life of the community can not be doubted. The uncontradicted evidence con-

tained in the record fully supports the findings of the District Court that:

> The characteristics of the economy of the United States make it peculiarly vulnerable to a stoppage in coal production, largely because of its great dependence on machines, about 43 percent of all energy produced in the United States being derived from bituminous coal. Four-fifths of all energy used in driving locomotives on Class 1 railroads is derived from bituminous coal; about four-fifths of all fuels and energy-producing material used in the production of steel is derived from bituminous coal; over 60 percent of all energy used in the production of electric power by public utilities is derived from bituminous coal; and about four-fifths of all energy obtained for electric power is derived from bituminous coal. Over 80 percent of Class 1 railroads, over 60 percent of public utilities and steel-producing industries would have to shut down completely within sixty days if the current coal stoppage continue for that length of time.
>
> If the current work stoppage were to continue for a sixty-day period, there would be a decline in total employment of at least 5,000,000 full-time workers and the national income would decline from the present rate of $170,000,000,000 per year to a rate of $150,000,000,000 per year with a resulting loss in income paid to workers at the rate of considerably more than $1,000,000,000 per month, and with a loss of national income, a

fraction of which has been estimated at one billion to one and one-quarter billion dollars during that period. A loss of even one billion dollars in income payments, only a fraction of the loss which would actually be suffered from a continued work stoppage, would result in a loss to the United States of tax revenues of about $280,000,000.

The current work stoppage has caused and will continue to cause irreparable injury to the plaintiff, to the people of the United States, and to the industry and economy of the United States.

The coal produced by the mines now affected by the work stoppage is indispensable for the continued operation of the national economy during the transition from war to peace. (R. 98, 107–108.)

The United States accordingly sought, as temporary relief in its action for declaratory judgment, to have the defendants recall the notice of termination in order to prevent irreparable public injury, at least until disposition of the legal controversy by a court of the United States.[14]

[14] The district court's power to grant the restraining order was not restricted by the circumstances that this proceeding was instituted pursuant to the Federal Declaratory Judgments Act (28 U. S. C. sec. 400). That Act "was not devised to deprive courts of their equity powers or of their freedom to withhold relief upon established equitable principles." *Great Lakes Co.* v. *Huffman*, 319 U. S. 293, 300. Cf. *Washington Terminal Co.* v. *Boswell*, 124 F. 2d 235 (App. D. C.), aff'd by equally divided court 319 U. S. 732. And the power to grant injunctive relief in such proceedings has been uni-

This Court, in the only case in which it has considered a similar problem, unanimously affirmed the propriety of such injunctive relief to protect the people of the country from a less serious threat to their welfare. *In re Debs*, 158 U. S. 564. Moreover, no case or statute has been found which denies to the United States the assistance of the equity powers of the judiciary for the protection of the life of the community.[15]

Indeed, less dominant public interests have been regarded as of primary importance in determining the propriety of injunctive relief. *Virginian Ry.* v. *Federation*, 300 U. S. 515; *Texas & N. O. R. Co.* v.

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formly upheld. See, e. g., *Crosley Corp.* v. *Hazeltine Corp.*, 122 F. (2d) 925 (C. C. A. 3), certiorari denied 315 U. S. 813; *Cresta Blanca Wine Co.* v. *Eastern Wine Corp.*, 143 F. (2d) 1012 (C. C. A. 2); *Interstate Natural Gas Co.* v. *Gully*, 8 F. Supp. 174 (S. D. Miss.), aff'd *Gully* v. *Interstate Natural Gas Co.*, 82 F. (2d) 145 (C. C. A. 5), certiorari denied 298 U. S. 688; *Moore Calculating Machine Co.* v. *Marchant Calculating Machine Co.*, 48 F. Supp. 84 (E. D. Pa.); *Mitchell & Weber* v. *Williamsbridge Mills*, 14 F. Supp. 954 (S. D. N. Y.); *F. G. Vogt & Sons* v. *Rothensies*, 11 F. Supp. 225 (E. D. Pa.); *Standard Acc. Ins. Co.* v. *Grimmett*, 32 F. Supp. 81 (W. D. La.); *Sunshine Min. Co.* v. *Carver*, 34 F. Supp. 274 (N. D. Idaho); Borchard, *Declaratory Judgments* (2d ed.) 454, 455; Anderson, *Declaratory Judgments*, sec. 114.

[15] See *United States* v. *San Jacinto Tin Co.*, 125 U. S. 273; *United States* v. *American Bell Telephone Co.*, 128 U. S. 315, 367; *United States* v. *Richert*, 188 U. S. 432; *Heckman* v. *United States*, 224 U. S. 413, 439–442; *Sanitary District* v. *United States*, 266 U. S. 405, 425, 426; cf. *Hurley* v. *Kincaid*, 285 U. S. 95, 104, note 3; *United States* v. *Railway Employers Department*, 283 Fed. 479 (N. D. Ill.), 286 Fed. 228 (N. D. Ill.), 290 Fed. 978 (N. D. Ill.); *United States* v. *Frank J. Hayes* (D. Ind.), Nov. Term, 1919, Equity 312, unreported.

Railway Clerks, 281 U. S. 548; *Yakus* v. *United States*, 321 U. S. 414; *Scripps-Howard Radio, Inc.* v. *Federal Communications Commission*, 316 U. S. 4, 15; *Porter* v. *Warner Holding Company*, No. 793, October Term 1945 (decided June 3, 1946); *Great Lakes Co.* v. *Huffman*, 319 U. S. 293, 297, 298; *Securities & Exchange Commission* v. *U. S. Realty Co.*, 310 U. S. 434, 455; *United States ex rel Greathouse* v. *Dern*, 289 U. S. 352, 360, and cases there cited.

In the instant case, temporary injunctive relief was essential to preserve the *status quo* and to protect the country from irreparable injury, and such interim relief was not burdensome to defendants. They were merely required to postpone for the brief period of the temporary restraining order the calling of a strike.

The temporary injunctive relief which was granted by the District Court was proper under traditional equitable principles. Recognizing the great strides in judicial and statutory declaration of essential and lawful rights of labor during the past fifty years, nevertheless, the basic principle of the *Debs* case is necessarily valid as applied to the public interest threatened by the emergency here. For the—

> government, entrusted, by the very terms of its being, with powers and duties to be exercised and discharged for the general welfare, has a right to apply to its own courts for any proper assistance in the

exercise of the one and the discharge of the other * * *. The obligations which it is under to promote the interest of all, and to prevent the wrongdoing of one resulting in injury to the general welfare, is often of itself sufficient to give it a standing in court * * * while it is not the province of the government to interfere in any mere matter of private controversy between individuals, or to use its great powers to enforce the rights of one against another, yet, whenever the wrongs complained of are such as affect the public at large, and are in respect of matters which by the Constitution are entrusted to the care of the Nation, and concerning which the Nation owes the duty to all the citizens of securing to them their common right, then the mere fact that the government has no pecuniary interest in the controversy is not sufficient to exclude it from the courts, or prevent it from taking measures therein to fully discharge those constitutional duties. (*In re Debs, supra,* at 584 and 586.)[16]

[16] The necessity for vigorous governmental action to meet threats to the life of the community was indicated by Mr. Justice Holmes in an unpublished dissent in *Hitchman Coal & Coke Co.* v. *Mitchell* (245 U. S. 229):

"I have no doubt that when the power of either capital or labor is exerted in such a way as to attack the life of the community, those who seek their private interest at such cost are public enemies, and should be dealt with as such. * * *" *Holmes-Pollock Letters*, Vol. 2, p. 28, Harvard University Press (1941).

The defendants, while not denying the historic power of a court of equity to aid the Government in a case such as this, have contended that the Clayton Act and the Norris-LaGuardia Act placed them beyond the reach of the powers of the court in this case. That contention is erroneous.

II

THE NORRIS–LA GUARDIA ACT AND THE CLAYTON ACT DID NOT PLACE THE DEFENDANTS BEYOND THE REACH OF THE COURT'S JURISDICTION

It is evident from the language and legislative history of the Norris-LaGuardia Act and of the Clayton Act[17] that those laws were not intended to render the United States impotent to meet effectively, with the aid of a court of equity, a threatened disaster such as this. The restatement and clarification in the Norris-LaGuardia Act of the purposes which Congress had set forth in the Clayton Act was forecast in the comprehensive dissenting opinion of Mr. Justice Brandeis in *Truax* v. *Corrigan*, 257 U. S. 312, 354 and discussed by Mr. Justice Frankfurter in *United States* v. *Hutcheson*, 312 U. S. 219 and by Mr. Justice Black in *Allen Bradley Co.* v. *Local Union No. 3, International Brotherhood of Electrical Workers*, 325 U. S. 797.

[17] Act of March 23, 1932, c. 90, 47 Stat. 70 (29 U. S. C. 101-115); Act of October 15, 1914, c. 323, Section 20, 38 Stat. 738 (29 U. S. C. 52).

As this Court pointed out in the *Hutcheson* and *Allen Bradley* cases, *supra,* the Norris-LaGuardia Act explicitly restated the public policy of the United States in regard to industrial conflict and redefined the area of economic conflict that had best be left to economic forces and the pressure of public opinion and not subjected to the judgment of the courts. In thus clarifying the law applicable to such industrial conflict, the Congress also unequivocally indicated that the legislation was not intended to apply to a case such as this. Examination of the legislative history of the Norris-LaGuardia Act does not, in our opinion, leave room for any doubt on this point. Moreover, in a later "harmonizing text", the temporary War Labor Disputes Act, an express declaration of outlawry of certain labor conduct was added to the "interlacing statutes".

The Government's position here does not in any way detract from the vitality of the Norris-LaGuardia Act. This Court has held that, within the area of economic conflict to which it is addressed, the Norris-LaGuardia Act effectively bars governmental intervention, whether by injunction or otherwise. Furthermore, the policy of governmental neutrality in industrial disputes under normal conditions envisaged by the Norris-LaGuardia Act goes so far as to bar criminal proceedings which might tip the scales in favor of one party to the conflict. *United States* v. *Hutcheson,* 312 U. S. 219; see *United States* v.

American Federation of Musicians, 318 U. S. 741. But even in the area of economic conflict governed by the Norris-LaGuardia Act fraud and violence are not proper weapons in an industrial dispute (Section 4 (e) and Section 7).

It is, of course, beyond dispute that in the Norris-LaGuardia Act, the purpose of the Congress was to protect the right of employees to organize into unions and to engage in concerted lawful activities for the purpose of collective bargaining and other mutual aid and protection. And in the Wagner Act, 49 Stat. 449, this congressional purpose found further expression. However, though the Norris-LaGuardia and Clayton Acts are effective in insuring Governmental neutrality in cases involving labor disputes within their scope, they have no application here for neither the policy nor the purpose nor the language of those statutes extends to this case.

Admittedly, neither the Norris-LaGuardia Act nor the antecedent Clayton Act expressly includes the United States. Aside from this fact, and from the fundamental rule that a restrictive statute, no matter how broad its terms, does not comprehend the Government unless the Government is specifically mentioned,[18] it is manifest from the state-

[18] *United States* v. *Herron*, 20 Wall. 251; *Dollar Savings Bank* v. *United States*, 19 Wall. 227; *United States* v. *Fox*, 94 U. S. 315; *Guarantee Title & Trust Co.* v. *Title Guaranty & Surety Co.*, 224 U. S. 152; *United States* v. *Cooper Corporation*, 312 U. S. 600; *United States* v. *Hoar*, 26 Fed. Cas. 329 #15373 (D. Mass.); Black, *Interpretation of Laws*, Second Edition, p. 94.

ments of the legislators that the Norris-LaGuardia Act was not intended to affect the Government's right to seek injunctive relief in a case such as this.

The legislative history of the Act provides confirmation that the reference in Section 2 to the "interference, restraint or coercion of employers of labor, or their agents" is a reference to private individuals and not to the United States. The history of the Act is one of improper practices by private employers. (H. Rep. No. 669, 72d Cong., 1st Sess., p. 3 ff; S. Rep. 163, 72d Cong., 1st Sess., p. 15.)

The sponsors of the Act, who, of course, were familiar with the *Debs* case, repeatedly disavowed an intention to affect the Government's right to seek injunctive relief when necessary for the functioning of the Government.

Representative LaGuardia,[19] in answer to a proposed amendment which would have specifically

[19] The contemporaneous legislative history contains no statement by Senator Norris which is illuminating on this question. However, in his autobiography, "Fighting Liberal" (MacMillan Co., 1945), Senator Norris stated (p. 316):

"I have had few personal contacts with John L. Lewis, or with any large number of his associates, but I feel strongly that no man should strike against his country in time of war. No man, representing either management or labor, should resort to strike methods in order to enforce demands in time of deadly national peril. It seems to me that the miners have forgotten the blessings and the rights given them by the anti-injunction law, and have followed false leaders

excepted the United States from the Act, stated (75 Cong. Rec. 5503):

> I do not see how in any possible way the United States can be brought in under the provisions of this bill.

Representative Michener, a member of the House Committee which reported the bill which became the Norris-LaGuardia Act, stated (75 Cong. Rec. 5464):

> Be it remembered that this bill does not attempt to legislate concerning Government employees. I do not believe that the enactment of this bill into law will take away from the Federal Government any rights which it has under existing law, to seek and obtain injunctive relief where the same is necessary for the functioning of the Government.

Representative Michener further stated (75 Cong. Rec. 5509):

> * * * This deals with labor disputes between individuals, not where the Government is involved. It is my notion that under this

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who care more for their own ambitions than they do for freedom and civilization in the world.

"Nothing contained in the provisions of the Norris-LaGuardia law, however, made it possible for the striking miners to take the course mapped in the recent crisis by miner leadership. Nothing in the fundamental decent principles embodied in that law—a law that attempts to safeguard and protect the liberties of the individual man—justified anyone in staying the hands of government in its glorious, noble attempts to save a civilized world from European dictatorship. Wrong committed in equalizing earlier injustices never becomes right. Right and justice are not achieved by piling wrong upon wrong."

> bill the Government can function with an injunction, if that is necessary in order to carry out the purpose of the Government. I should like to see this clarified, but I want to go on record as saying that under my interpretation of this bill the Federal Government will not at any time be prevented from applying for an injunction, if one is necessary in order that the Government may function.

Representative Schneider, who opposed the issuance of injunctions even when sought by the Government, clearly disclosed the understanding of Congress that the bill would not preclude the Government from securing such relief in an appropriate case [20] (75 Cong. Rec. 5514):

> And it has also been pointed out that the enactment of this bill will not take away from the Federal Government any rights which it has under existing law to seek and obtain injunctive relief where the same is deemed by Government officials to be necessary for the functioning of the Government. In other words, a tremendous field in which the injunction can still be used effectively will remain after the enactment of this bill.

Not only did the legislators omit any express reference to the United States in the Norris-LaGuardia Act, but the language they used in the

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[20] It is of interest to note that this was the understanding of District Judge Goldsborough who was a member of the Congress at that time and voted for the Norris-LaGuardia Act (R. 202).

Act is inappropriate to express any intention to comprehend the United States.

Thus, Section 2 is an express disapproval, as a matter of legislative policy, of the coercive practices which had been engaged in by private employers; Section 3 outlawed "Yellow Dog" contracts in private employment;[21] Section 4, immunizing membership in a labor organization or "employer organization," obviously does not relate to the United States which could not be thought of as a member of such an organization;[22] Section 7, in providing as a condition for the issuance of an injunction that "the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection" and that notice be given to "those public officers of the county and city within which unlawful acts have been threatened or committed, charged with the duty to protect complainant's property," could hardly have been intended to refer to the United States. Section 7, in further providing for an undertaking "with adequate security" as a condition to a temporary restraining order, and Section 10, in dealing with the "usual bond for costs" on appeal, if applicable to the

[21] Contrast the different public considerations reflected by 5 U. S. C. 652, relating to postal employees, and Title 3, Sec. 301, First Supplemental Appropriations Act, 1947, Pub. Law 663, 79th Cong., 2d Sess., relating to the right of employees of the Federal Government to strike.

[22] Cf. National Labor Relations Act, 49 Stat. 450, 29 U. S. C. 152.

United States, would represent unique exceptions to the contrary provision as to all other suits in which the United States is a party.[23]

In contrast with the peace-time purposes of the Norris-LaGuardia Act, the Congress declared in the War Labor Disputes Act that during the limited life of the statute, industrial conflict interrupting production in essential industries is not to be permitted to imperil the national welfare, but is to be resolved in accordance with the specific machinery created by that statute, and not by a test of economic strength. The Government cannot, therefore, be likened to the private employer to whom equity, under the Norris-LaGuardia Act, may not grant injunctive relief in the normal labor dispute. To hold that the Norris-LaGuardia Act denies the United States the aid of the federal courts in effectively carrying out emergency functions in the public interest under the War Labor Disputes Act would confound the meaning and defeat the purposes of both statutes.

In the War Labor Disputes Act, Congress enacted legislation "touching one of the most sensitive national problems" and once again "cut through all the tangled verbalisms" and enunciated a simple and clear policy and declaration of unlawfulness precisely applicable to this situation. Cf. *United States* v. *Hutcheson, supra,* at p. 235. For, Congress stated in Section 6 (a)

[23] 28 U. S. C. 870; Fed. Rules of Civ. Procedure 62(e). 65(c). See also, Advisory Committee notes to Rule 73.

of the War Labor Disputes Act that "whenever any * * * mine * * * is in the possession of the United States, it shall be unlawful for any person * * * to coerce, instigate, induce, conspire with, or encourage any person, to interfere, by lock-out, strike, slow-down, or other interruption, with the operation of such * * * mine * * *" 57 Stat. 165, 50 U. S. C. App. Supp. V, Section 1506 (a).

In reading these statutes together, it will be recalled that the War Labor Disputes Act was the response which the Congress made to wartime work stoppages, including those in the coal mines of which the Government had taken possession. Addressing itself to such threats to the survival of the nation, Congress specifically declared the instigation of such strikes to be unlawful after the Government made a seizure under the Act. Whatever immunity the defendants might have had under the Norris-LaGuardia Act, and we think they had none, it is manifest that their instigation of a strike in November, 1946, after the Government had taken possession of the mines, was unlawful. Therefore, even if Section 4 of the Norris-La Guardia Act conferred or declared a right of defendants, as against the United

States, to cause others to strike, that right ceased to exist on the passage of Section 6(a) of the War Labor Disputes Act, for Congress had changed the rules. As Mr. Justice Brandeis, in dissenting in *Truax* v. *Corrigan*, 257 U. S. 312, 354, stated:

> For conditions change; and, furthermore, the rules evolved, being merely experiments in Government, must be discarded when they prove to be failures.

That such a change in the rules cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act, this Court held in *Virginian Ry.* v. *Federation*, 300 U. S. 515. There this Court denied an employer refuge under the Norris-LaGuardia Act and held that the express obligation imposed upon the employer by the later Railway Labor Act to "treat" with the union, was to be enforced with the aid of an injunction, although no such remedy was provided by the latter Act. On behalf of the unanimous Court, Mr. Justice Stone said (at p. 563):

> It suffices to say that the Norris-LaGuardia Act can affect the present decree only so far as its provisions are found not to conflict with those of § 2, Ninth, of the Railway Labor Act, authorizing the relief

which has been granted. Such provisions cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act. See the *Railway Clerks* case, *supra*, 571; cf. *Callahan* v. *United States*, 285 U. S. 515, 518; *Walla Walla* v. *Walla Walla Water Co.*, 172 U. S. 1, 22; *International Alliance* v. *Rex Theatre Corp.*, 73 F. (2d) 92, 93.

It is submitted, in view of the foregoing, that the Norris-LaGuardia and Clayton Acts did not place the defendants beyond the reach of the court's jurisdiction in this case.

III

THE CONTEMPT JUDGMENTS ARE VALID SINCE IN ANY EVENT THE DISTRICT COURT HAD JURISDICTION TO DETERMINE ITS JURISDICTION

We have argued that the Norris-LaGuardia Act and the Clayton Act did not deprive the District Court of jurisdiction to grant the injunctive relief in this case. But, should this court now decide the contrary, the contempt judgments, for the reasons hereinafter discussed, are nevertheless valid.

This is a case of first impression. Whether the Norris-LaGuardia and Clayton Acts apply to a case such as this had never been judicially determined prior to the decision of the District Court in this case. Of necessity, therefore, the District Court in undertaking to decide that question was

exercising judicial power. Incident to the exercise of that judicial power and in order to protect that power to determine effectively the controversy between the parties to this case, the temporary restraining order was issued.

The temporary restraining order was served on the defendants, along with all other papers in the case, on November 18, 1946, about two and one-half days before the time set by defendants for the commencement of the strike. Admittedly, the defendants did not comply with the order. Nor did they move the court to vacate the restraining order. Rather the defendants themselves assumed to judge the validity of the order and to ignore it, until after they were cited for contempt. Such conduct was expressly condemned by this Court in *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 450:

> If a party can make himself a judge of the validity of orders which have been issued, and by his own act of disobedience set them aside, then are the courts impotent, and what the Constitution now fittingly calls the "judicial power of the United States" would be a mere mockery.

Upon ascertaining that substantially all bituminous coal production had ceased by the afternoon of November 21, 1946, the Government requested and the District Court issued a rule ad-

dressed to the defendants to show cause four days later why they should not be punished for contempt (R. 96). By the return day the defendants had neither complied with the restraining order nor sought to have it vacated. A week after the service of the restraining order, during which time substantial injury was inflicted on the people of the United States, the defendants for the first time moved to vacate the rule to show cause. It was only after a full trial, the entry of judgments for contempt, the imposition of sentences, the issuance of a preliminary injunction, and the filing of petitions for writs of certiorari in this Court by the United States, that the defendants, on December 7, 1946, nineteen days after service upon them of the restraining order, purported to comply with the directions of the court. The damage to the United States which resulted from the nineteen days of lost production of bituminous coal was very substantial.

The necessity for obedience to such temporary restraining orders has been recognized and punishment for contempt expressly sanctioned. *United States* v. *Shipp*, 203 U. S. 563; *Howat* v. *Kansas*, 258 U. S. 181; *Carter* v. *United States*, 135 F. (2d) 858 (C. C. A. 5); *Reid* v. *Independent Union of All Workers*, 200 Minn. 599; *Main Cleaners & Dyers, Inc.* v. *Columbia Super Cleaners, Inc.*, 332 Pa. 71.

United States v. *Shipp, supra*, arose on an original information for contempt of this Court. One Johnson, a Negro, had previously been sen-

tenced to death by a Tennessee state court for rape. A petition for a writ of habeas corpus had been filed with the Circuit Court and denied. An appeal to this Court had been allowed, and an order made staying all proceedings against Johnson pending the appeal. The information for contempt alleged that Shipp, the sheriff having custody of Johnson, had nevertheless withdrawn the customary guard from the jail and left only the night jailer in charge; that he and other defendants had conspired to break into the jail for the purpose of lynching Johnson, with intent to show contempt for the order of this Court, and for the purpose of preventing it from hearing the appeal; and that although he pretended to do his duty, he actually abetted the mob which took Johnson out of the jail and murdered him.

On the return to the order to show cause, Shipp and other defendants asserted that this Court was without jurisdiction to punish the contempt, because it had jurisdiction of the appeal only if a constitutional question were involved, and the evidence before the Circuit Court, if not the face of the petition for habeas corpus, showed that the alleged constitutional question was a pretense. Mr. Justice Holmes, in giving the opinion of the unanimous court rejecting the contention as to want of jurisdiction and ordering that the contempt be tried, stated (203 U. S. at 573):

We regard this argument as unsound. It has been held, it is true, that orders made by a court having no jurisdiction to make them may be disregarded without liability to process for contempt. *In re Sawyer,* 124 U. S. 200; *Ex parte Fisk,* 113 U. S. 713; *Ex parte Rowland,* 104 U. S. 604. But even if the Circuit Court had no jurisdiction to entertain Johnson's petition, and if this court had no jurisdiction of the appeal, this court, and this court alone, could decide that such was the law. It and it alone necessarily had jurisdiction to decide whether the case was properly before it. On that question, at least, it was its duty to permit argument and to take the time required for such consideration as it might need. See *Mansfield, Coldwater & Lake Michigan Ry. Co.* v. *Swan,* 111 U. S. 379, 387. Until its judgment declining jurisdiction should be announced, it had authority from the necessity of the case to make orders to preserve the existing conditions and the subject of the petition, just as the state court was bound to refrain from further proceedings until the same time. Rev. Stat. 766; act of March 3, 1893, c. 226, 27 Stat. 751. The fact that the petitioner was entitled to argue his case shows what needs no proof, that the law contemplates the possibility of a decision either way, and therefore must provide for it.

Applicable here is this Court's decision in *Howat* v. *Kansas, supra.* In that case writs of error to

the Supreme Court of Kansas sued out to test the validity under the Federal Constitution of a statute of Kansas creating a Court of Industrial Relations. The Act had created an administrative tribunal empowered to arbitrate controversies between employer and employees in mines and other industries affecting the public interest. The tribunal was empowered to make investigations and to call witnesses and to make determinations as to terms and conditions of employment. Orders of the Board were to be enforced by application to the Supreme Court of Kansas which had power of review. The Act forbade any injunction to restrain an employee from quitting his employment. It was directed against causing strikes. It had been preceded by a strike in the coal mines of Kansas a year before.

Howat and others had been subpoenaed before the Court of Industrial Relations and failed to appear. On application by the Court of Industrial Relations to a state district court, an order was issued directing Howat and others to attend and testify. This was disobeyed and on contempt proceedings Howat and others asserted that the legislation was void. They were committed to jail until they would comply with the subpoena. On appeal, the Supreme Court of the State affirmed, holding that without regard to the validity of the provisions of the Industrial Relations Act, they were under legal obligation to obey the subpoena and were in contempt for not doing so.

The Supreme Court found no error on this point.

The second writ of error involved a suit by the State of Kansas against Howat and others, members of local unions of the United Mine Workers of America, charging that they were threatening to call a general strike in the coal mines and would be endangering the peace and order in the communities in which those mines were located, with intent to violate the law of Kansas, particularly the Court of Industrial Relations Act, that they were intimidating miners and conspiring to stop the operation of railroads and of the State in the conduct of its governmental affairs and to cut off the supply of coal which would seriously affect and injure the welfare and health of the people. The defendants' answer was that they were exercising their lawful and constitutional rights and that the stoppage in the production of coal, if any, was merely the incidental effect of the exercise of their lawful rights. They further alleged that the Industrial Relations Act was void under the Federal Constitution. After trial the Court issued a permanent injunction, which among other things enjoined the defendants from causing the miners to quit their work at the mines but which did not enjoin any miner from quitting his employment. Proceedings were initiated later by the Attorney General charging a violation of the injunction. In those proceedings the defendants attacked the validity of the Industrial Court Act and of the permanent in-

junction and asserted they had done nothing unlawful. The Court found that the defendants had directed a strike at the mine, that a cessation of the work ensued, that this was done wilfully in disobedience of the injunction, and sentenced the defendants to imprisonment for a year.

The Supreme Court of Kansas held on appeal that the district court, a state court of general jurisdiction, had general power to issue injunctions in equity and even if its exercise of the power was erroneous, the injunction was not void and that aside from the Industrial Relations Act the state district court had power to issue injunctions in abatement of public nuisances. The court relied on the case of *In re Debs, supra.* This Court said, at page 189:

> An injunction duly issuing out of a court of general jurisdiction with equity powers upon pleadings properly invoking its action, and served upon persons made parties therein and within the jurisdiction, must be obeyed by them however erroneous the action of the court may be, even if the error be in the assumption of the validity of a seeming but void law going to the merits of the case. It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them

is contempt of its lawful authority, to be punished. *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 450; *Toy Toy* v. *Hopkins*, 212 U. S. 542, 548. See also *United States* v. *Shipp*, 203 U. S. 563, 573.

In *Carter* v. *United States, supra*, the Circuit Court of Appeals for the Fifth Circuit applied the *Shipp* case in a situation far less important to the public than that presented in this case. There, the district court had issued a restraining order against certain labor unions and union officials and had punished one such official for disobedience. The Circuit Court of Appeals upheld the contempt conviction although it decided (in a contemporaneous appeal—*Brown* v. *Coumanis*, 135 F. (2d) 163) that the case involved a labor dispute under the Norris-LaGuardia Act and that therefore the district court lacked jurisdiction in the basic action to have issued a restraining order. Rejecting the argument that since the restraining order was beyond the court's jurisdiction it could form no basis for contempt proceedings, the court said:

> It cannot now be broadly asserted that a judgment is always a nullity if jurisdiction of some sort or other is wanting. It is now held that, except in case of plain usurpation, a court has jurisdiction to determine its own jurisdiction, and if it be contested and on due hearing it is upheld, the decision unreversed binds the parties as a thing adjudged. *Treines* v. *Sunshine*

Mining Co., 308 U. S. 66, 60 S. Ct. 44, 84 L. Ed. 85; *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381, 403, 60 S. Ct. 907, 84 L. Ed. 1263; *Stoll* v. *Gottlieb*, 305 U. S. 165, 59 S. Ct. 134, 83 L. Ed. 104. So in the matter of federal jurisdiction, which is often a close question, the federal court may either have to determine the facts, as in contested citizenship, or the law, as whether the case alleged arises under a law of the United States. See *Binderup* v. *Pathe Exchange*, 263 U. S. 291, at page 305, 44 S. Ct. 96, 68 L. Ed. 308." (p. 861.)

The court then discussed *United States* v. *Shipp*, *supra*, and stated that that case applied directly to the action of the District Court, pointing out that the District Court

> had a new question of jurisdiction to solve. It alone had authority in the first instance to decide whether or not the case arose under the Norris-LaGuardia Act, 29 U. S. C. A. §§ 101–115, a law of the United States. It could lawfully by a temporary injunction preserve the business which was the subject of the litigation until a hearing could be had. The order was not final. It deprived Carter of no right. It only required that he refrain from interfering with another man for a few days. Carter did not elect to move to dissolve the order, but to flout and disobey it. The order was, while it lasted, a lawful one, such as a district court of the United States in the exer-

cise of its equity powers could make, pending a hearing of a doubtful question of jurisdiction. The question of jurisdiction was not frivolous. It had never before been decided. (p. 862.)[24]

Upon the principles enunciated in the above cases, which we believe are essential to the administration of justice, the contempt judgments are valid in any event since the District Court had the power to decide a case of first impression properly before it. That court's power to adjudicate the defendants in contempt for their failure to comply with the restraining order is not affected by any determination of the question whether the Norris-LaGuardia and Clayton Acts apply to this case. At best that was only an arguable contention which posed an issue for decision by the court.

IV

THE CONSTITUTIONAL RIGHTS OF THE DEFENDANTS WERE FULLY PROTECTED

1. *The proceedings preliminary to the contempt trial were correct, the defendants fully realized prior to the trial that they were charged with both civil and criminal contempt, the civil and criminal contempts were properly tried in a single proceeding.*

The procedure by which the contempt proceedings were instituted—petition for rule to show

[24] See also *Stoll* v. *Gottlieb*, 305 U. S. 165, 171–2; cf. *Jones* v. *Securities & Exchange Commission*, 298 U. S. 1, 17–18.

cause,[25] supporting affidavit,[26] and rule to show cause—was in accordance with the approved practice in criminal contempt proceedings. *Forrest* v. *United States*, 277 Fed. 873 (C. C. A. 9); *United States* v. *Lederer*, 140 F. 2d 136 (C. C. A. 7); *In re Meckley*, 137 F. 2d 3[illegible] (C. C. A. 3); *United States* v. *Balaban*, 26 F. Supp. 491 (D. C. N. D. Ill.); see *Gompers* v. *United States*, 233 U. S. 604.[27]

Rule 42 of the Federal Rules of Criminal Procedure provides that a criminal contempt not com-

[25] An unverified petition for rule to show cause alleging contempt on information and belief is proper. *Laughlin* v. *United States*, 151 F. 2d 281, 284 (App. D. C.); *National Labor Relations Board* v. *Red River Lumber Co.*, 109 F. 2d 157, 160 (App. D. C.); *National Labor Relations Board* v. *Arcade-Sunshine Co.*, 122 F. 2d 964 (App. D. C.); *Conley* v. *United States*, 59 F. 2d 929 (C. C. A. 8).

[26] A supporting affidavit made on information and belief is proper. In fact, no affidavit at all is necessary. *In re Fletcher*, 107 F. 2d 666, 668 (App. D. C.); *Bowles* v. *United States*, 50 F. 2d 848 (C. C. A. 4); *Kelly* v. *United States*, 250 Fed. 947 (C. C. A. 9).

[27] An indictment or information is not necessary for the trial of criminal contempt. *Jennings* v. *United States*, 264 Fed. 399, 405 (C. C. A. 8). The provisions of the Clayton Act prescribing proceedings for criminal contempt in certain cases (Act of October 15, 1914, 38 Stat. 738, 28 U. S. C. 387) are not applicable here, since these contempts consisted of disobedience of an order entered in a suit brought by the United States (Act of October 15, 1914, 38 Stat. 739, 28 U. S. C. 389). *Hill* v. *United States ex rel Weiner*, 300 U. S. 105; *United States* v. *Goldman*, 277 U. S. 229; *Forrest* v. *United States*, 277 Fed. 873 (C. C. A. 9). It should be observed, however, that the procedure followed in the instant case for instituting the contempt proceedings met all the requirements of the Clayton and Norris-LaGuardia Acts.

mitted in the actual presence of the court shall be prosecuted on a "notice" which "shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such."

Although the petition for a rule to show cause did not in terms describe defendants' contempts as "criminal" it did allege that defendants had "wilfully, wrongfully, and deliberately disobeyed and violated" the temporary restraining order (R. 66); the memorandum of points and authorities in support of the petition, which was served on defendants (R. 71), cited and discussed criminal contempt cases as applicable precedents (R. 70); and the facts stated in the supporting affidavit clearly constituted both civil and criminal contempt. The defendants' motion to vacate the rule to show cause, which they served prior to the trial, characterized the proceedings as one for criminal contempt (R. 82). The points and authorities of the defendants submitted in support of that motion, which they also served before the trial, expressly stated that this was a proceeding for criminal contempt (R. 84). Counsel for defendants stated to the court prior to the trial that this was a criminal contempt proceeding (R. 192, 194). Counsel for the Government stated to the court prior to the commencement of trial, and in the presence of defendants, that this was both a civil and criminal contempt proceeding (R. 196, 198). Manifestly, de-

fendants fully understood that they were charged with criminal contempt. The District Court correctly found that, if there was any error because of the failure of the petition specifically to describe the contempt as having a criminal aspect, it was harmless in view of the fact that the defendants, before the trial, were given ample notice of the charge (R. 97, 204).[28]

Moreover, there was no reason why the criminal contempt, which consisted of the same acts as the civil contempt, should not have been tried in the same proceeding, as long as defendants were afforded in it, as they were, those features of criminal procedure to which they were entitled. This practice has been followed even where the main equity suit was brought by a private litigant. See

[28] Pleadings in criminal contempt cases need not meet the standards applicable to criminal prosecutions. All that was required was that respondents be informed of the charge against them and that they be given a reasonable opportunity to make their defense. *Woodside* v. *United States*, 60 F. (2d) 823 (C. C. A. 4); *Fanning* v. *United States*, 72 F. (2d) 929 (C. C. A. 4); *Armstrong* v. *United States*, 18 F. (2d) 371 (C. C. A. 7); *National Labor Relations Board* v. *Arcade-Sunshine Co.*, 122 F. (2d) 964 (App. D. C.); *Conley* v. *United States*, 59 F. (2d) 929, 935 (C. C. A. 8). The due process clause of the Fifth Amendment required no more than this. *Blackmer* v. *United States*, 284 U. S. 421, 440. Those requirements were fully complied with in these proceedings. (R. 73, 205.) Defendants' counsel conceded that they had been informed of plaintiff's contentions and had full opportunity to meet them (R. 267).

Nye v. *United States*, 313 U. S. 33; *In re Merchants' Stock and Grain Company et al. Petitioners*, 223 U. S. 639; *Matter of Christiansen Engineering Company*, 194 U. S. 458; *Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324; *New Orleans* v. *New York Mail Steamship Co.*, 20 Wall. 387.[29]

The concept of criminal contempt proceedings as separate from the main equity suit was originally developed to resolve questions as to the reviewability of such contempt orders by this Court and by the Circuit Court of Appeals. See the *Bessette* case, *supra*. Of course no such question is involved in the present case. A civil and a criminal contempt may be tried in a single proceeding and punished by a fine imposed in a single order. Cf. *Union Tool Company* v. *Wilson*, 259 U. S. 107.

Defendants' objection that the contempt proceedings were not independent of the equity suit actually is that the contempt proceedings should have proceeded exactly as they did, with the sole difference that the pleadings should have borne some other number. Such a nonprejudicial error, if any, would not justify reversal of a criminal

[29] That the criminal contempt proceedings were pleaded and tried as a part of the main equity suit in the *Christiansen*, *Bessette*, and *New Orleans* cases does not appear from the Court's opinions, but is disclosed by the records in these cases. See *Christiansen* case, Brief in behalf of respondent, pp. 2, 11, 14; *Bessette* record, Certificate of the Circuit Court of Appeals for the Seventh Circuit, p. 2, Appellant's Brief, p. 16, Appellee's Brief, p. 2; *New Orleans* Record, pp. 1, 12, 58.

conviction, *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150; *United States* v. *Ragen*, 314 U. S. 513; *United States* v. *Trenton Potteries*, 273 U. S. 392; *Segurola* v. *United States*, 275 U. S. 106.

2. *The defendants were accorded and exercised fully the right of cross examination of the witnesses in the contempt trial, all of whom were produced by the Government.*

At the contempt trial there were eight witnesses produced by the Government. The defendants were advised in advance of the names and identities of each of the Government's proposed witnesses (R. 241). The Government did not call as a witness either the individual defendant or any officer, agent or representative of the defendant Union. The defendants were afforded the opportunity to cross examine each of the Government's witnesses and exercised that right as to two of the witnesses. The defendants were in no way limited in the full exercise of the right of cross examination.

3. *The defendants raised no issue of fact, did not seek a jury trial, did not object to trial by the Court alone and were not entitled to a jury trial.*

The rule to show cause provided that unless waived by them the defendants would be tried for the contempt by the court with an advisory jury (R. 73). Upon the return day of the rule to show cause, the defendants and each of them made a

return. In their return the defendants admitted their failure to comply with the restraining order but denied the jurisdiction of the court to have issued that order and the rule to show cause (R. 503). At no time did the defendants produce evidence to raise any issue of fact—indeed, the subsequent trial for contempt was had only because the defendants although not disputing the facts later interposed a plea of not guilty to the charges. It is to be noted, moreover, that the defendants waived the advisory jury which had been tendered to them on the ground that the questions involved here were primarily questions of law and that the defendants desired to expedite the case and reach a quick resolution of the issues involved (R. 205). The defendants at no time requested a trial by jury nor did they at any time make an objection to trial by the court alone (R. 205).

Finally, the defendants would have been entitled to a trial by jury of any issues of fact only if Section 11 of the Norris La-Guardia Act were applicable to the instant contempt proceeding and if this case arose under that Act. For neither the well-settled rules of equity procedure in contempt cases nor the Clayton Act accord them any such right.[30] That the Norris-LaGuardia Act is

[30] *Ex parte Terry*, 128 U. S. 289; *Eilenbecker* v. *Plymouth County*, 134 U. S. 31; *Gompers* v. *United States*, 233 U. S. 604, 610. The sections of the Clayton Act providing for jury trial, upon demand, in certain contempt cases (Act of October 15, 1914, 38 Stat. 738, 28 U. S. C. 387) are not ap-

inapplicable to a case such as this has been previously demonstrated.

4. *The defendants were proven guilty of the contempts beyond a reasonable doubt.*

The District Court in its judgment and findings concluded that the guilt of each of the defendants of the charges of contempt had been established by the Government beyond any reasonable doubt (R. 99). There is more than ample evidence in the record to support this finding. There is neither testimony nor documentary evidence to the contrary.

It is expected that the defendant union will contend that it should not be held responsible because the requirements of proof contained in Sec. 6 of the Norris-LaGuardia Act have not been met. Such a contention has no merit. It overlooks the fact that no agency is involved since the wrongful act here, namely, contempt of court, was the failure of the union *itself* to comply with a duty imposed upon it by a court of the United States. Cf. *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344. The union's ability to have complied with the court's direction, whether through the defendant Lewis or through some other officer or agent of the union, cannot be denied. And the

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plicable here, since these contempts consisted of disobedience of an order entered in a suit brought by the United States (Act of October 15, 1914, 38 Stat. 739, 28 U. S. C. 389): *Hill* v. *United States ex rel Wein*[illegible], 300 U. S. 105; *United States* v. *Goldman*, 277 U. S. 229; *Forrest* v. *United States*, 277 Fed. 873 (C. C. A. 9).

record amply establishes that the union as such had knowledge of the restraining order (R. 63–64, 500–501, 503).

5. *The fines were properly imposed on each defendant and were not excessive.*

The fine of $10,000 imposed upon defendant Lewis (R. 101) and the fine of $3,500,000 imposed upon defendant United Mine Workers (R. 102) were appropriate under the circumstances of this case and come well within the sound judicial discretion of the District Court. *Huffman* v. *United States,* 148 F. 2d 943 (C. C. A. 10th); *United States* v. *Lederer,* 140 F. 2d 136 (C. C. A. 7th); *In re Independent Publishing Co.,* 240 Fed. 849 (C. C. A. 9th).

There is no evidence that the fines are beyond the ability of defendants to pay, or take an undue proportion of the assets of the defendants. *Moore* v. *United States,* 150 F. 2d 323, 325 (C. C. A. 10th). Defendants' counsel, although protesting the fines as excessive, made no effort to show that they were beyond defendants' reasonable capacity to pay them (R. 321–326).

Defendant Lewis as president of defendant United Mine Workers has an annual salary of $25,000, and the latter's constitution provides that he shall receive, in addition to his salary, "such additional sums for additional service rendered as may be authorized and approved" by himself as president (R. 321, 327, 515, 523). The record shows that this defendant posted

$10,000 in the District Court promptly after imposition of sentence (R. 512).

The amount of the fine imposed on defendant United Mine Workers, $3,500,000 was about a quarter of the substantial *cash* assets of that defendant, which exceeded $13,000,000 (R. 321). The amount of the fine was immediately forthcoming (R. 513). It is in no position to complain of the fine as a violation of the Eighth Amendment or otherwise. Cf. *Badders* v. *United States*, 240 U. S. 391, 394; *Ebeling* v. *Morgan*, 237 U. S. 625; *Walsh* v. *Gurman*, 132 Conn. 58, 42 Atl. 2d 362; *Lapinski* v. *Copacino*, 131 Conn. 119, 38 Atl. 2d 592. And see *Gulf, Colorado & Santa Fe Railway Company* v. *Texas*, 246 U. S. 58, 62.

The fines were imposed after findings that defendants had committed both civil and criminal contempt (R. 101, 102). Compare *Gompers* v. *Bucks Stove & Range Company*, 221 U. S. 418, with *Gompers* v. *United States*, 233 U. S. 604. *Union Tool Co.* v. *Wilson*, 259 U. S. 107; *Lamb* v. *Cramer*, 285 U. S. 217; *Nye* v. *United States*, 313 U. S. 33. These fines are not excessive for either the civil contempt alone or the criminal contempt alone. As to civil contempt, the fines are measurable by the amount of damages caused by the contemptuous conduct. *Leman* v. *Krentler-Arnold Hinge Last Co.*, 284 U. S. 448, 455; *Lamb* v. *Cramer*, 285 U. S. 217; *Parker* v. *United States*, 126 F. 2d 370 (C. C. A. 1st); *National Labor Relations Board* v. *Remington Rand, Inc.*, 130 F.

2d 919 (C. C. A. 2d); *Raymor Ballroom Co.* v. *Buck*, 110 F. 2d 207 (C. C. A. 1st). The fines here were, in all probability, far less than the pecuniary loss to the United States from reduced tax collections alone (R. 98, 294, 297).[21]

The fines were not excessive within the meaning of the Eighth Amendment. It cannot be said that, under all the circumstances, the court abused its sound discretion. *Hill* v. *United States ex rel Weiner*, 300 U. S. 105; and see *United States* v. *Goldman*, 277 U. S. 229; *Huffman* v. *United States*, 148 F. 2d 943 (C. C. A. 10th); *United States* v. *Lederer*, 140 F. 2d 136 (C. C. A. 7th); *In re Independent Publishing Co.*, 240 Fed. 849 (C. C. A. 9th). In view of the wilfullness and aggravated characte of the contempt and its continuance, of the great injury caused and threatened by defendants' contemptuous acts, and of their financial resources, the amounts of these fines are not disproportionate to the offenses. *United States* v. *Lederer*, 140 F. 2d 136 (C. C. A. 7th). See *Howard* v. *Fleming*, 191 U. S. 126, 135.

6. *The defendants' rights to freedom from involuntary servitude and to freedom of speech were fully protected.*

A brief résumé of the facts will be useful in connection with any contention that the defend-

[21] The United States, as a civil litigant, is entitled to the compensatory relief afforded by a fine for civil contempt. *McCrone* v. *United States*, 307 U. S. 61; *Parker* v. *United States*, 135 F. 2d 54 (C. C. A. 1st).

ants were subjected to involuntary servitude or were denied freedom of speech. The restraining order for the violation of which the defendants have been found in contempt was served on November 18, 1946. It commanded two types of action. The first command was that the defendants withdraw the notice of alleged termination of the contract which was in fact a strike call effective November 20, 1946. The second command of the restraining order was that the defendants refrain from specified actions, such as, that they refrain from issuing or otherwise giving publicity to any notice that the Krug-Lewis agreement had been, was, or would be terminated. The defendants, in this portion of the restraining order, were also prohibited from instigating or encouraging the mine workers to interfere by strike with the operation of the mines (R. 60).

The return of the defendants admitted, as the evidence showed, that subsequent to the receipt of the restraining order the defendants did nothing with respect to rescinding or recalling the strike call. The return stated that at all times after the restraining order the status of the notice of termination remained the same (R. 96). And until December 6, 1946, after this matter had been brought to this Court, the defendants did nothing.

The failure of the defendants to comply with the court's direction to withdraw the strike notice resulted in the strike being consummated on No-

vember 21, 1946, as scheduled. The contempt proceeding was initiated by rule to show cause obtained at about 2:00 p. m. on November 21, 1946, and after trial resulted in conviction of contempt for the defendants' admitted failure to act.

The contempt convictions therefore raise only the question whether the failure of defendants to perform affirmative action directed by the District Court constituted contempt. Those proceedings did not involve the violation of the prohibitory provisions of the restraining order.[52]

The direction to the defendants to withdraw the notice to strike no more created involuntary servitude or violated freedom of speech than would a direction by the court to the defendants to ring a bell or flash a light as a signal to the miners to return to work.[53] The power of a court to direct

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[52] The preliminary injunction which issued after the conclusion of the contempt proceedings was similar in form to the restraining order which was the basis of the contempt proceedings (R. 60, 102).

[53] Both the War Labor Disputes Act and the restraining orders issued by the District Court recognize the distinction between prohibiting the instigation of a strike and compelling any individual to perform involuntary service. The War Labor Disputes Act, in Section 6 (a), makes it unlaw-

such affirmative action was clearly stated in the *Virginian Railway* case, *supra*. There an employer was directed by the District Court affirmatively to bargain collectively. Mr. Justice Stone, speaking for a unanimous Court, said (pp. 549–550):

> Petitioner contends that if the statute is interpreted as requiring the employer to negotiate with the representative of his employees, its obligation is not the appropriate subject of a decree in equity; that negotiation depends on desires and mental attitudes which are beyond judicial control, and that since equity cannot compel the parties to agree, it will not

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ful to instigate or aid a strike against a mine or facility which has been seized by the Government, but it provides, however, that "no individual shall be deemed to have violated the provisions of this section by reason only of his having ceased work or having refused to continue to work or to accept employment." Similarly, the District Court's restraining order, while it precluded the instigation or inducement of a strike by the defendants, did not preclude any individual from ceasing his employment. See in this connection R. 169 *et seq.* Moreover, these defendants have no standing to complain of a violation, if any, of the constitutional rights of some other person to be free from involuntary servitude, since that right is purely personal. The *Slaughterhouse* cases, 83 U. S. 36, 69; *United States* v. *White*, 322 U. S. 694.

compel them to take the preliminary steps which may result in agreement.

There is no want of capacity in the court to direct complete performance of the entire obligation: both the negative duties not to maintain a company union and not to negotiate with any representative of the employees other than respondent and *the affirmative* duty to treat with respondent. Full performance of both is commanded by the decree in terms which leave in no uncertainty the requisites of performance. In compelling compliance with either duty it does far less than has been done in compelling the discharge of a contractual or statutory obligation calling for a construction or engineering enterprise. *New Orleans, M. & T. Ry. Co.* v. *Mississippi,* 112 U. S. 12; *Wheeling Traction Co.* v. *Board of Commissioners,* 248 Fed. 205; see *Gas Securities Co.* v. *Antero & Lost Park Reservoir Co.,* 259 Fed. 423, 433. *Board of Commissioners* v. *A. V. Wills & Sons,* 236 Fed. 362, 380; *Jones* v. *Parker,* 163 Mass. 564; 40 N. E. 1044, or in granting specific performance of a contract for the joint use of a railroad bridge and terminals, *Joy* v. *St. Louis,* 138 U. S. 1; *Union Pacific Ry. Co.* v. *Chicago, R. I. & P. Ry. Co.,* 163 U. S. 564; cf. *Prospect Park & Coney Island R. Co.* v. *Coney Island & Brooklyn R. Co.,* 144 N. Y. 152; 39 N. E. 17.

This Court, in passing, also pointed out that Section 9 of the Norris-LaGuardia Act, which provides

that a restraining order or injunction "shall include only a *prohibition* of such specific act or acts as may be expressly complained of" in the complaint, does not preclude a mandatory injunction and stated (pp. 562–563):

> The evident purpose of this section, as its history and context show, was not to preclude mandatory injunctions, but to forbid blanket injunctions against labor unions, which are usually prohibitory in form, and to confine the injunction to the particular acts complained of and found by the court.

In *Toledo Railway Co.* v. *Pennsylvania Co.*, 54 Fed. 730 (C. C. N. D. Ohio) there had been negotiations between the railway and Arthur, the Chief Executive of the Brotherhood of Locomotive Engineers. After these had broken down, Arthur issued an order to the employees of the railway to strike, and all other members of the brotherhood not to haul freight issuing from the struck railroad. The railway obtained a temporary restraining order against Arthur, directing him "to rescind any order he might have promulgated to the engineers on connecting lines to refuse to handle complainant's freight." On a later motion for an injunction to restrain Arthur "from issuing, promulgating, or continuing in force" the strike notice then, Judge Taft held that a mandatory injunction was proper where necessary to maintain the *status quo* and,

therefore, both the temporary restraining order and the preliminary injunction could properly be issued, compelling Arthur to rescind his order. In so holding Judge Taft pointed out:

> The office of a preliminary injunction is to preserve the status quo until, upon final hearing, the court may grant full relief. Generally this can be accomplished by an injunction prohibitory in form, but it sometimes happens that the status quo is a condition not of rest, but of action, and the condition of rest is exactly what will inflict the irreparable injury upon complainant, which he appeals to a court of equity to protect him from. In such a case courts of equity issue mandatory writs before the case is heard on its merits (citing cases).
>
> It is the duty of the court promptly to prevent, at all hazards, the probable obstruction to its main injunction, by auxiliary injunctive process, and, if such obstruction has actually been interposed, to remove it by the same means. On this ground the court was fully justified in restraining Arthur, as it did, from continuing in force any order he might have issued in conflict with the previous order of the court. This was mandatory, but it was necessary to secure the enforcement of the court's previous order, and to preserve the status quo. Had the order of Arthur, then in force, been allowed to continue, future equitable relief would have been un-

availing. A rescission of the order could work injury to no one. Mandatory injunctions issue under such circumstances. Mr. High states the rule as follows, in his work on Injunctions (section 2):

> "And when there is willful and unlawful invasion of plaintiff's right, against his protest and remonstrance, the injury being a continuing one, a mandatory injunction may issue in the first instance." (54 Fed. at 745)

The *Toledo* case has been cited with approval by this Court. In *Peoria Railway Co.* v. *United States,* 263 U. S. 528, Mr. Justice Brandeis, writing for the court, relied on the authority of the *Toledo* case in pointing out that the courts can compel the performance of a duty by a mandatory injunction:

> The switching order here in question compels performance of the primary duty to receive and transport cars of a connecting carrier. That courts may enforce such duties by mandatory injunction, including a preliminary restraining order, has long been recognized. (263 U. S. at 535.)

Also apposite is *Vaughn* v. *Winston,* 83 F. (2d) 370 (C. C. A. 10). In that case the plaintiff, Winston, had a contract with the Ohio Textbook Commission to furnish books. Defendant Vaughn, State Superintendent of Public Instruction, had written a letter to various school authorities in which he had stated that in his

opinion the contract was illegal and that the school authorities were not bound to use plaintiff's books. The District Court, as part of the relief, ordered Vaughn to send out another letter recalling his prior one. The Circuit Court of Appeals affirmed this part of the order, stating:

> The case presented is one where a continuing wrong can be stopped only by an affirmative act. In order to restore the status as it existed before Vaughn invaded the rights of appellee, affirmative action must be taken.
>
> The power of equity, in an injunctive action, to issue an order requiring affirmative action is frequently and properly exercised. * * * The order of the trial court is couched in the form of a double negative, a circumstance to which we attach no importance. If the court is without power in a particular case to require the doing of an affirmative act, it does not acquire that power by the form of words in which the command is couched.
>
> The order requiring Vaughn to send out letters to correct the untrue statements made in his earlier letters is justified on several distinct grounds: (1) It is the only appropriate means of rectifying the wrong done. (2) It was necessary to restore the status existing before Vaughn invaded ap-

pellee's rights. (3) Equity having jurisdiction to issue the prohibitory injunction, it had power to do all other things necessary to accomplish complete justice, for equity does not do things piecemeal. (83 F. 2d at 374.) See also *Jones* v. *Securities and Exchange Commission*, 298 U. S. 1; *Ickes* v. *Virginia-Colorado Development Corp.*, 295 U. S. 639.

Not only is it clear, in view of the above cases, that a court may direct affirmative action such as that directed here, but it is well settled that the essential operations of Government, such as the administration of justice, may warrant a court in compelling a person to speak, if self-incrimination or privilege is not involved, even though the person would prefer to remain silent. *Blair* v. *United States*, 250 U. S. 273; *Howat* v. *Kansas*, 258 U. S. 181. It is also clear from these cases that the belief of a person that a statute or an order of the court under it, pursuant to which he is required to testify, may be unconstitutional, and that the court is without jurisdiction, constitutes no defense to a contempt proceeding based upon refusal to testify. Cf. *United States* v. *Kapp*, 302 U. S. 214, 218.

But apart from this, there can be no serious question that both the mandatory and prohibitory directions were constitutionally made. The

danger to the life of the community from the failure of the defendants to withdraw the strike notice and from their instigation of a strike, as overwhelmingly proved, met the most rigid test of "clear and present danger." *Schenck* v. *United States*, 249 U. S. 47; *Milk Wagon Drivers Union* v. *Meadowmoor Dairies, Inc.*, 312 U. S. 287. Cf. *Bridges* v. *California*, 312 U. S. 252; *Board of Education* v. *Barnette*, 319 U. S. 624; *Thomas* v. *Collins*, 323 U. S. 516.

CONCLUSION

This case does not infringe upon the guarantees given by the Constitution and the statutes of the United States. The general application of the Norris-LaGuardia Act to ordinary conflicts between private employers and employees is not challenged. The Government is not seeking to establish any principle which would interfere with the rights of labor.

The Government does seek, however, to uphold its right and authority to operate facilities the possession of which it has taken for war purposes under a temporary [34] wartime statutory authorization. The Government seeks as well to vindicate the power of the Federal Judiciary by the issuance of a temporary restraining order to prevent irreparable injury to the people of the nation, to prohibit interference with the sovereign functions of the United States, and to protect the jurisdiction

[34] See Proclamation of the President proclaiming cessation of hostilities as of December 31, 1946 (12 Fed. Reg. 1).

of the courts to decide questions of law and fact pending final judicial determination.

The convictions and judgments of contempt and the preliminary injunction were in all respects lawful and proper and should be affirmed.

Respectfully submitted,

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APPENDIX "A"

Constitutional Provisions, Statutes, and Executive Order 9728

1. Article III of the Constitution provides, in part, as follows:

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.
>
> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

2. Judicial Code, Section 24 (1), as amended, 28 U. S. C. 41 (1), provides in part as follows:

The district courts shall have original jurisdiction as follows:

First. Of all suits of a civil nature, at common law or in equity, brought by the United States, or by any officer thereof authorized by law to sue. * * *.

3. The Federal Declaratory Judgment Act, Act of June 14, 1934, c. 512, 48 Stat. 955, as amended by the Act of August 30, 1935, c. 829, Sec. 405, 49 Stat. 1027, 28 U. S. C. 400, Judicial Code, Section 274d, provides as follows:

(1) In cases of actual controversy (except with respect to Federal taxes) the courts of the United States shall have power upon petition, declaration, complaint, or other appropriate pleadings to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed, and such declaration shall have the force and effect of a final judgment or decree and be reviewable as such.

(2) Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party, whose rights have been adjudicated by the declaration, to show cause why further relief should not be granted forthwith.

(3) When a declaration of right or the granting of further relief based thereon shall involve the determination of issues of fact triable by a jury, such issues may be submitted to a jury in the form of interrogatories, with proper instructions by the

court, whether a general verdict be required or not.

4. The War Labor Disputes Act (Act of June 25, 1943, c. 144, 57 Stat. 163, 50 U. S. C. App. (Supp. V), 1501–1511) provides as follows:

AN ACT, Relating to the use and operation by the United States of certain plants, mines, and facilities in the prosecution of the war, and preventing strikes, lockouts, and stoppages of production, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "War Labor Disputes Act."

DEFINITIONS

SEC. 2. As used in this Act—

(a) The term "person" means an individual, partnership, association, corporation, business trust, or any organized group of persons.

(b) The term "war contract" means—

(1) a contract with the United States entered into on behalf of the United States by an officer or employee of the Department of War, the Department of the Navy, or the United States Maritime Commission;

(2) a contract with the United States entered into by the United States pursuant to an Act entitled "An Act to promote the defense of the United States";

(3) a contract, whether or not with the United States, for the production, manufacture, construction, reconstruction, installation, maintenance, storage, repair, mining, or transportation of—

(A) any weapon, munition, aircraft, vessel, or boat;

(B) any building, structure or facility;

(C) any machinery, tool, material, supply, article, or commodity; or

(D) any component material or part of or equipment for any article described in subparagraph (A), (B), or (C);

the production, manufacture, construction, reconstruction, installation, maintenance, storage, repair, mining, or transportation of which by the contractor in question is found by the President as being contracted for in the prosecution of the war.

(c) The term "war contractor" means the person producing, manufacturing, constructing, reconstructing, installing, maintaining, storing, repairing, mining, or transporting under a war contract or a person whose plant, mine, or facility is equipped for the manufacture, production, or mining of any articles or materials which may be required in the prosecution of the war or which may be useful in connection therewith; but such term shall not include a carrier, as defined in title I of the Railway Labor Act, or a carrier by air subject to title II of such Act.

(d) The terms "employer", "employee", "representative", "labor organization", and "labor dispute" shall have the same meaning as in section 2 of the National Labor Relations Act.

POWER OF PRESIDENT TO TAKE POSSESSION OF PLANTS

SEC. 3. Section 9 of the Selective Training and Service Act of 1940 is hereby

amended by adding at the end thereof the following new paragraph:

"The power of the President under the foregoing provisions of this section to take immediate possession of any plant upon a failure to comply with any such provisions, and the authority granted by this section for the use and operation by the United States or in its interests of any plant of which possession is so taken, shall also apply as hereinafter provided to any plant, mine, or facility equipped for the manufacture, production, or mining of any articles or materials which may be required for the war effort or which may be useful in connection therewith. Such power and authority may be exercised by the President through such department or agency of the Government as he may designate, and may be exercised with respect to any such plant, mine, or facility whenever the President finds, after investigation, and proclaims that there is an interruption of the operation of such plant, mine, or facility as a result of a strike or other labor disturbance, that the war effort will be unduly impeded or delayed by such interruption, and that the exercise of such power and authority is necessary to insure the operation of such plant, mine, or facility in the interest of the war effort: *Provided*, That whenever any such plant, mine, or facility has been or is hereafter so taken by reason of a strike, lock-out, threatened strike, threatened lock-out, work stoppage, or other cause, such plant, mine, or facility shall be returned to the owners thereof as soon as practicable, but in no event more than sixty days after the restoration of the productive efficiency thereof prevailing prior to

the taking of possession thereof: *Provided further*, That possession of any plant, mine, or facility shall not be taken under authority of this section after the termination of hostilities in the present war, as proclaimed by the President, or after the termination of the War Labor Disputes Act; and the authority to operate any such plant, mine, or facility under the provisions of this section shall terminate at the end of six months after the termination of such hostilities as so proclaimed."

TERMS OF EMPLOYMENT AT GOVERNMENT-OPERATED PLANTS

SEC. 4. Except as provided in section 5 hereof, in any case in which possession of any plant, mine, or facility has been or shall be hereafter taken under the authority granted by section 9 of the Selective Training and Service Act of 1940, as amended, such plant, mine, or facility, while so possessed, shall be operated under the terms and conditions of employment which were in effect at the time possession of such plant, mine, or facility was so taken.

APPLICATION TO WAR LABOR BOARD FOR CHANGE IN TERMS OF EMPLOYMENT AT GOVERNMENT-OPERATED PLANTS

SEC. 5. When possession of any plant, mine, or facility has been or shall be hereafter taken under authority of section 9 of the Selective Training and Service Act of 1940, as amended, the Government agency operating such plant, mine, or facility, or a majority of the employees of such plant, mine, or facility or their representatives,

may apply to the National War Labor Board for a change in wages or other terms or conditions of employment in such plant, mine, or facility. Upon receipt of any such application, and after such hearings and investigations as it deems necessary, such Board may order any changes in such wages, or other terms and conditions, which it deems to be fair and reasonable and not in conflict with any Act of Congress or any Executive order issued thereunder. Any such order of the Board shall, upon approval by the President, be complied with by the Government agency operating such plant, mine, or facility.

INTERFERENCE WITH GOVERNMENT OPERATION OF PLANTS

SEC. 6. (a) Whenever any plant, mine, or facility is in the possession of the United States, it shall be unlawful for any person (1) to coerce, instigate, induce, conspire with, or encourage any person, to interfere, by lock-out, strike, slow-down, or other interruption, with the operation of such plant, mine, or facility, or (2) to aid any such lock-out, strike, slow-down, or other interruption interfering with the operation of such plant, mine, or facility by giving direction or guidance in the conduct of such interruption, or by providing funds for the conduct or direction thereof or for the payment of strike, unemployment, or other benefits to those participating therein. No individual shall be deemed to have violated the provisions of this section by reason only of his having ceased work or having refused to continue to work or to accept employment.

(b) Any person who willfully violates any provision of this section shall be subject to a fine of not more than $5,000, or to imprisonment for not more than one year, or both.

FUNCTIONS AND DUTIES OF THE NATIONAL WAR LABOR BOARD

SEC. 7. (a) The National War Labor Board (hereinafter in this section called the "Board"), established by Executive Order Number 9017, dated January 12, 1942, in addition to all powers conferred on it by section 1 (a) of the Emergency Price Control Act of 1942, and by any Executive order or regulation issued under the provisions of the Act of October 2, 1942, entitled "An Act to amend the Emergency Price Control Act of 1942, to aid in preventing inflation, and for other purposes," and by any other statute, shall have the following powers and duties:

(1) Whenever the United States Conciliation Service (hereinafter called the "Conciliation Service") certifies that a labor dispute exists which may lead to substantial interference with the war effort, and cannot be settled by collective bargaining or conciliation, to summon both parties to such dispute before it and conduct a public hearing on the merits of the dispute. If in the opinion of the Board a labor dispute has become so serious that it may lead to substantial interference with the war effort, the Board may take such action on its own motion. At such hearing both parties shall be given full notice and opportunity to be heard,

but the failure of either party to appear shall not deprive the Board of jurisdiction to proceed to a hearing and order.

(2) To decide the dispute, and provide by order the wages and hours and all other terms and conditions (customarily included in collective-bargaining agreements) governing the relations between the parties, which shall be in effect until further order of the Board. In making any such decision the Board shall conform to the provisions of the Fair Labor Standards Act of 1938, as amended; the National Labor Relations Act; the Emergency Price Control Act of 1942, as amended; and the Act of October 2, 1942, as amended, and all other applicable provisions of law; and where no other law is applicable the order of the Board shall provide for terms and conditions to govern relations between the parties which shall be fair and equitable to employer and employee under all the circumstances of the case.

(3) To require the attendance of witnesses and the production of such papers, documents, and records as may be material to its investigation of facts in any labor dispute, and to issue subpenas requiring such attendance or production.

(4) To apply to any Federal district court for an order requiring any person within its jurisdiction to obey a subpena issued by the Board; and jurisdiction is hereby conferred on any such court to issue such an order.

(b) The Board, by its Chairman, shall have power to issue subpenas requiring the attendance and testimony of witnesses, and the production of any books, papers, records, or other documents, material to any inquiry or hearing before the Board or any designated member or agent thereof. Such subpenas shall be enforceable in the same manner, and subject to the same penalties, as subpenas issued by the President under title III of the Second War Powers Act, approved March 27, 1942.

(c) No member of the Board shall be permitted to participate in any decision in which such member has a direct interest as an officer, employee, or representative of either party to the dispute.

(d) Subsections (a) (1) and (2) shall not apply with respect to any plant, mine, or facility of which possession has been taken by the United States.

(e) The Board shall not have any powers under this section with respect to any matter within the purview of the Railway Labor Act, as amended.

NOTICE OF THREATENED INTERRUPTIONS IN WAR PRODUCTION, ETC.

SEC. 8. (a) In order that the President may be apprised of labor disputes which threaten seriously to interrupt war production, and in order that employees may have an opportunity to express themselves, free from restraint or coercion, as to whether they will permit such interruptions in wartime—

(1) The representative of the employees of a war contractor, shall give

to the Secretary of Labor, the National War Labor Board, and the National Labor Relations Board, notice of any such labor dispute involving such contractor and employees, together with a statement of the issues giving rise thereto.

(2) For not less than thirty days after any notice under paragraph (1) is given, the contractor and his employees shall continue production under all the conditions which prevailed when such dispute arose, except as they may be modified by mutual agreement or by decision of the National War Labor Board.

(3) On the thirtieth day after notice under paragraph (1) is given by the representative of the employees, unless such dispute has been settled, the National Labor Relations Board shall forthwith take a secret ballot of the employees in the plant, plants, mine, mines, facility, facilities, bargaining unit, or bargaining units, as the case may be, with respect to which the dispute is applicable on the question whether they will permit any such interruption of war production. The National Labor Relations Board shall include on the ballot a concise statement of the major issues involved in the dispute and of the efforts being made and the facilities being utilized for the settlement of such dispute. The National Labor Relations Board shall by order forthwith certify the results of such balloting, and such results shall be open to public inspection. The National Labor Relations Board may provide for

preparing such ballot and distributing it to the employees at any time after such notice has been given.

(b) Subsection (a) shall not apply with respect to any plant, mine, or facility of which possession has been taken by the United States.

(c) Any person who is under a duty to perform any act required under subsection (a) and who willfully fails or refuses to perform such act shall be liable for damages resulting from such failure or refusal to any person injured thereby and to the United States if so injured. The district courts of the United States shall have jurisdiction to hear and determine any proceedings instituted pursuant to this subsection in the same manner and to the same extent as in the case of proceedings instituted under section 24 (14) of the Judicial Code.

POLITICAL CONTRIBUTIONS BY LABOR ORGANIZATIONS

SEC. 9. Section 313 of the Federal Corrupt Practices Act, 1925 (U. S. C., 1940 edition, title 2, sec. 251), is amended to read as follows:

"SEC. 313. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution in connection with any election to any political office, or for any corporation whatever, or any labor organization to make a contribution in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or for any candidate,

political committee, or other person to accept or receive any contribution prohibited by this section. Every corporation or labor organization which makes any contribution in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than $1,000 or imprisoned for not more than one year, or both. For the purposes of this section 'labor organization' shall have the same meaning as under the National Labor Relations Act."

TERMINATION OF ACT

SEC. 10. Except as to offenses committed prior to such date, the provisions of this Act and the amendments made by this Act shall cease to be effective at the end of six months following the termination of hostilities in the present war, as proclaimed by the President, or upon the date (prior to the date of such proclamation) of the passage of a concurrent resolution of the two Houses of Congress stating that such provisions and amendments shall cease to be effective.

SEPARABILITY

SEC. 11. If any provision of this Act or of any amendment made by this Act, or the application of such provision to any person or circumstance, is held invalid, the remainder of the Act and of such amendments, and the application of such provision to other persons or circumstances, shall not be affected thereby.

5. The pertinent portion of Section 9 of the Selective Training and Service Act of 1940 (Act of September 16, 1940, 54 Stat. 885, 50 U. S. C. App. 301, *et seq.*) as amended by the War Labor Disputes Act, is set forth in Section 3 of the War Labor Disputes Act, set forth at pp. 85–87.

6. The Norris-LaGuardia Act, Act of March 23, 1932, c. 90, 47 Stat. 70, 29 U. S. C. 101–115, provides as follows:

> AN ACT To amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes.
>
> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That no court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act.
>
> SEC. 2. In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:
>
> Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of con-

tract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted.

SEC. 3. Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in section 2 of this Act, is hereby declared to be contrary to the public policy of the United States, shall not be enforceable in any court of the United States and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation, and any employee or prospective employee of the same, whereby

(a) Either party to such contract or agreement undertakes or promises not to

join, become, or remain a member of any labor organization or of any employer organization; or

(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization.

SEC. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrol-

ling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act.

SEC. 5. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 4 of this Act.

SEC. 6. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

SEC. 7. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dis-

pute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided,*

however, That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such

undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

SEC. 8. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

SEC. 9. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein.

SEC. 10. Whenever any court of the United States shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certify as in ordinary cases the record of the case to the circuit court of appeals for its review. Upon the filing of such record in the circuit court of appeals, the appeal shall be heard and the temporary injunctive order affirmed,

modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character.

SEC. 11. In all cases arising under this Act in which a person shall be charged with contempt in a court of the United States (as herein defined), the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed: *Provided,* That this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court.

SEC. 12. The defendant in any proceeding for contempt of court may file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred elsewhere than in the presence of the court or so near thereto as to interfere directly with the administration of justice. Upon the filing of any such demand the judge shall thereupon proceed no further, but another judge shall be designated in the same manner as is provided by law. The demand shall be filed prior to the hearing in the contempt proceeding.

SEC. 13. When used in this Act, and for the purposes of this Act—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the

same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

SEC. 14. If any provision of this Act or the application thereof to any person or circumstance is held unconstitutional or otherwise invalid, the remaining provisions of the Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

SEC. 15. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed.

7. Section 20 of the Clayton Act, Act of October 15, 1914, c. 323, Section 20, 38 Stat. 738, 29 U. S. C. 52, provides as follows:

No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons,

whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

8. Executive Order No. 9728 provides as follows:

EXECUTIVE ORDER NO. 9728

AUTHORIZING THE SECRETARY OF THE INTERIOR TO TAKE POSSESSION OF AND TO OPERATE CERTAIN COAL MINES

WHEREAS after investigation, I find and proclaim that there are interruptions or threatened interruptions in the operation of the mines producing bituminous coal as a result of existing or threatened strikes and other labor disturbances; that the coal produced by such mines is required for the war

effort and is indispensable for the continued operation of the national economy during the transition from war to peace; that the war effort will be unduly impeded or delayed by such interruptions; and that the exercise, as hereinafter specified, of the powers vested in me is necessary to insure the operation of such mines in the interest of the war effort and to preserve the national economic structure in the present emergency;

NOW, THEREFORE, by virtue of the power and authority vested in me by the Constitution and laws of the United States, including Section 9 of the Selective Training and Service Act of 1940 (54 Stat. 892) as amended by the War Labor Disputes Act (57 Stat. 163), as President of the United States and Commander-in-Chief of the Army and Navy of the United States, it is hereby ordered as follows:

1. The Secretary of the Interior is authorized and directed to take possession of any and all such mines, and, to the extent that he may deem necessary, of any real or personal property, franchises, rights, facilities, funds, and other assets used in connection with the operation of such mines; to operate or to arrange for the operation of such mines in such manner as he may deem necessary in the interest of the war effort; and to do all things necessary for, or incidental to, the production, sale, and distribution of the coal produced, prepared, or handled by the said mines.

2. The Secretary of the Interior shall operate the said mines in accordance with such terms and conditions of employment as are in effect at the time possession thereof is taken, subject to the provisions

of Section 5 of the War Labor Disputes Act.

3. Subject to the national wage and price stabilization policies as determined by the National Wage Stabilization Board and the Economic Stabilization Director, the Secretary of the Interior is authorized, pursuant to the provisions of Section 5 of the War Labor Disputes Act, following such negotiations as he may deem necessary with the duly constituted representatives of the employees, to apply to the National Wage Stabilization Board for appropriate changes in the terms and conditions of employment for the period of the operation of the mines by the Government.

4. In carrying out this order, the Secretary of the Interior shall act through or with the aid of such public or private instrumentalities or persons as he may designate. All Federal agencies are directed to cooperate with the Secretary of the Interior to the fullest extent possible in carrying out the purposes of this order.

5. The Secretary of the Interior shall make employment available and provide protection to all employees working at such mines and to all persons seeking employment so far as they may be needed; and upon the request of the Secretary of the Interior, the Secretary of War shall take such action, if any, as he may deem necessary or desirable to provide protection to all such persons and mines.

6. The Secretary of the Interior shall permit the managements of the mines taken under the provisions of this order to continue with their managerial functions to the maximum degree possible consistent with the aims of this order.

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7. The Secretary of the Interior is authorized and directed to maintain customary working conditions in the mines and customary procedure for the adjustment of workers' grievances. He shall recognize the right of the workers to continue their membership in any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, provided that such concerted activities do not interfere with the operations of the mines.

8. Possession of any mine or mines taken under this order shall be terminated by the Secretary of the Interior as soon as practicable, but in no event more than sixty days after the restoration of the productive efficiency of any such mine or mines prevailing prior to the taking of possession thereof.

HARRY S. TRUMAN

THE WHITE HOUSE,

May 21, 1946.

APPENDIX "B"

Findings of Fact and Conclusions of Law

The findings of fact and conclusions of law of the District Court (R. 90–99) are set forth in full below. Record references have been added to the findings of fact.

FINDINGS OF FACT

1. On May 21, 1946, after investigation, the President of the United States found and proclaimed that there were interruptions or threatened interruptions in the operation of the mines producing bituminous coal as the result of existing and threatened strikes or other labor disturbances; that the coal produced by such mines was required for the war effort and was indispensable for the operation of the national economy during the transition of war to peace; that the war effort would be unduly impeded or delayed by such interruptions; and that the exercise, by the President, of the powers vested in him by the Constitution and Laws of the United States was necessary to insure the operation of such mines in the interest of the war effort and to preserve the national economic structure in the then existing emergency. [R. 2, 9–10, 207, 335–336.]

2. On May 21, 1946, the President of the United States, by virtue of the authority vested in him by the Constitution and laws of the United States, issued Executive Order 9728, whereby he author-

ized and directed the Secretary of the Interior to take possession of any and all bituminous coal mines the operations of which were then interrupted or threatened with interruption because of work stoppages, and, to the extent that he might deem necessary, of any real or personal property, franchises, rights, facilities, funds and other assets used in connection with the operation of such mines; to operate or arrange for the operation of such mines in such manner as he might deem necessary in the interest of the war effort; and to do all things necessary for, or incidental to, the production, sale, and distribution of the coal produced, prepared, or handled by the said mines. [R. 2, 9–10, 207, 335–336.]

3. Pursuant to the provisions of said Executive Order 9728, the United States, through J. A. Krug, the Secretary of the Interior, on and after May 22, 1946, duly took possession of most of the bituminous coal mines of the nation. [R. 2, 208, 210, 336–342.] Since that time, the United States, through the Secretary of the Interior, has been and now remains in possession of such coal mines. [R. 2, 36, 211, 261, 289, 345–398, 486.]

4. As a consequence of negotiations authorized by the said Executive Order 9728, the Secretary of the Interior, as Coal Mines Administrator, on May 29, 1946, executed an agreement at Washington, D. C., with the defendant John L. Lewis, as President of the defendant Union (which agreement is hereinafter sometimes referred to as the Krug-Lewis Agreement). [R. 3, 10–15, 211, 399–403, 404.]

5. On May 29, 1946, the Secretary of the Interior, acting pursuant to the authority of the aforesaid Executive Order 9728 and section 5 of the War Labor Disputes Act, and in accordance with the provisions of the Krug-Lewis agreement, filed an application with the National Wage Stabilization Board for changes in wages and other terms and conditions of employment at the bituminous coal mines in Government possession. [R. 3, 211, 403.] The National Wage Stabilization Board thereupon, on May 31, 1946, issued its order, pursuant to Section 5 of the War Labor Disputes Act, approving changes in wages and other terms and conditions of employment agreed upon in the Krug-Lewis agreement and directed that they be put into effect at the said mines. Said order was approved by the President of the United States on May 31, 1946. [R. 3, 19–21, 211, 404–405.]

6. The Krug-Lewis agreement, by its terms, "covers for the period of Government possession the terms and conditions of employment in respect to all mines in Government possession which were as of March 31, 1946, subject to the National Bituminous Coal Wage Agreement, dated April 11, 1945." [R. 10, 11, 211, 399.]

7. The defendant Lewis, on October 21, 1946, sent a letter to the Secretary of the Interior in which he stated that Section 15 of the National Bituminous Coal Wage Agreement, dated April 11, 1945, had been specifically carried forward into the Krug-Lewis agreement and that under that section, either party to the Krug-Lewis agreement might give ten days' notice in writing of a desire for a negotiating conference upon the matters outlined in said notice; that the other party to the Krug-Lewis

agreement was thereupon required to attend said negotiating conference; and that at the end of fifteen days after the beginning of said negotiating conference, either party might give to the other, a notice in writing of the termination of the Krug-Lewis agreement, to be effective five days after the receipt of such notice. Acting pursuant to this interpretation of the Krug-Lewis agreement, the defendant Lewis notified the Secretary of the Interior that the defendant Union requested "a joint conference of the accredited representatives of the joint contracting parties to the Krug-Lewis agreement of May 29, 1946, for the purpose of negotiating new arrangements affecting wages, hours, rules, practices, differentials, inequalities and all other pertinent matters affecting or appertaining to the National Bituminous coal industry". [R. 4, 26–27, 217, 408–409.]

8. In reply thereto, on October 22, 1946, N. H. Collisson, Captain, USNR, as Coal Mines Administrator, acting for the Secretary of the Interior, sent a letter to the defendant Lewis in which the Coal Mines Administrator stated that the Krug-Lewis agreement had superseded Section 15 of the National Bituminous Coal Wage Agreement dated April 11, 1945; that the provisions of said Section 15 were no longer in effect; that, therefore, the Secretary of the Interior and the Coal Mines Administrator were unable to treat the defendant Lewis' letter of October 21, 1946, as a notice given pursuant to any existing contract provisions; and that the Coal Mines Administration considered the Krug-Lewis agreement in full force and effect; but that the Administration was ready to meet with the defendant Lewis "to discuss matters

affecting the operation of the bituminous coal mines under the Krug-Lewis agreement, and for that purpose, with the above reservations, any date for such discussions is agreeable to this Administration." [R. 4, 27–29, 217, 410–411.]

9. On the same day, the defendant Lewis sent a further letter to the Secretary of the Interior in which he reiterated his position and asserted that failure of the Secretary of the Interior to accede to his request would void the Krug-Lewis agreement. [R. 4–5, 29, 220, 412.]

10. On October 27, 1946, the Secretary of the Interior sent a telegram to the defendant Lewis requesting the defendant Lewis and (or) his representatives to meet with the Coal Mines Administrator and his associates on November 1 or any other date agreeable to the defendant Lewis. [R. 5, 29, 220, 412.][1]

12. In reply to the said telegram of October 27, 1946, the defendant Lewis, by a telegram of October 28, 1946, to the Secretary of the Interior, advised the Secretary of the Interior as follows:

"I ESTEEM YOUR TELEGRAM 27TH, RECEIVED BY ME TODAY, AS COMPLIANCE WITH REQUEST FOR OFFICIAL CONFERENCE CONTAINED BY LETTER 21 OCTOBER. I ACCORDINGLY ADVISE THAT REPRESENTATIVES UNITED MINE WORKERS WILL MEET WITH COAL MINES ADMINISTRATOR COLLISSON AND HIS ASSOCIATES AT 11 O'CLOCK A. M. ON FRIDAY, 1 NOVEMBER. UNDER THESE CONDITIONS KRUG-LEWIS AGREEMENT REMAINS EFFECTIVE AND UNCHANGED DURING PERIOD OF NEGOTIATION." [R. 5, 30, 220, 412–413.]

13. On November 1, 1946, a conference was held in Washington, D. C., attended

[1] There is no paragraph numbered 11 in the Findings of Fact made by the Court.

by representatives of the Secretary of the Interior and of the defendant Union, and that conference was thereafter continued from time to time, from November 1 to and including November 14, 1946, all without prejudice to the contentions of the respective parties regarding the right claimed by the defendants to terminate the Krug-Lewis agreement by unilateral notice. [R. 5, 221–223, 301, 302.] During the course of the meeting, on November 11, 1946, attended by the defendant Lewis and the Secretary of the Interior, among others, the representatives of the defendant Union for the first time advanced specific proposals for changes in the wages and other terms and conditions of employment in effect at the bituminous coal mines in the Government's possession, which proposals included changes of a substantial and far-reaching nature and which would involve an increase in the cost of production of coal at the mines of at least fifty cents a ton. [R. 5, 221–223, 237, 298–299, 305.]

14. Thereafter, on November 15, 1946, the defendant Lewis sent a letter to the Secretary of the Interior stating that "Fifteen days having now elapsed since the beginning of the above conference, the United Mine Workers of America, exercising its option, hereby terminate said Krug-Lewis agreement as of 12:00 o'clock p. m. midnight Wednesday, November 20, 1946." [R. 5–6, 34, 64, 223, 413.]

15. On the same day the Secretary of the Interior advised the defendant Lewis, by letter, "that you have no power under the Krug-Lewis agreement of May 29 or under the law, by unilateral declaration, to terminate the contract which by its terms 'covers for the period of Government possession

the terms and conditions of employment.'" [R. 6, 34–35.]

16. It has been for some years, and is now, as the defendants at all times well knew, the well-established policy of the defendant Union, consistently adhered to by its members, that the miners will not work in the absence of a contract, and that upon the declaration by the defendants that no contract exists, the miners cease work. No other stoppage order ever goes out. Such a declaration of "no contract" is in fact a call to strike. [R. 6, 37, 282–283, 483.]

17. The defendants sent out and distributed to the membership of the defendant Union [R. 284–286] a notice dated November 15, 1946, which read as follows [R. 284, 484]:

UNITED MINE WORKERS OF AMERICA

JOHN L. LEWIS
President

Metropolitan
0530

[SEAL]

UNITED MINE WORKERS' BUILDING
WASHINGTON 5, D. C.

NOVEMBER 15, 1946.

To the Members of the United Mine Workers of America:

Greetings:

The following is the exact text of a letter sent to the Secretary of the Interior, in charge of Coal Mines Administration:

"NOVEMBER 15, 1946.

Honorable J. A. KRUG,
Secretary of the Interior
Washington, D. C.

DEAR MR. SECRETARY: In accordance with the provisions of the Krug-Lewis Agreement dated May 29, 1946, the United Mine Work-

ers of America on October 21, 1946, officially requested a joint conference of the accredited representatives of the joint contracting parties to said agreement. Such conference convened on November 1, 1946.

Fifteen days having now elapsed since the beginning of said conference, the United Mine Workers of America, exercising its option, hereby terminates said Krug-Lewis Agreement as of 12:00 o'clock P. M., midnight, Wednesday, November 20, 1946.

Yours truly,

UNITED MINE WORKERS OF AMERICA,
By JOHN L. LEWIS, *President.*"

The foregoing is for your official information.

Sincerely yours,

/s/ JOHN L. LEWIS,
President.

This notice was a cease work or strike notice. [R. 6, 37, 282–283, 483.]

18. The letters of November 15, 1946, from the defendants to the Secretary of the Interior, purporting to terminate the Krug-Lewis agreement as of November 20, 1946, was released by the defendants to, and published by, the public press on or about November 15 and 16, 1946. [R. 223, 279–282, 482 insert.]

19. Thereafter, on November 18, 1946, the United States of America by the Attorney General of the United States, brought a suit against the United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as president of the United Mine Workers of America, under the Federal Declaratory Judgment Act (28 U. S. C.

Sec. 400) to obtain a declaration of rights and other legal relations, including a declaratory judgment or decree, an order for temporary injunctive relief, and such further relief as might be necessary or proper. [R. 1–51, 179–187.]

20. Upon the filing of the verified complaint, and upon plaintiff's application, this Court, on November 18, 1946, issued a temporary restraining order against the defendants, based upon the facts alleged in the complaint and upon affidavits filed in support of the application for the restraining order. The restraining order directed:

"* * * that the defendants and each of them and their agents, servants, employees and attorneys, and all persons in active concert or participation with them, be and they are hereby restrained pending further order of this Court from permitting to continue in effect the notice heretofore given by the defendant John L. Lewis to the Secretary of Interior dated November 15, 1946; and from issuing or otherwise giving publicity to any notice that or to the effect that the Krug-Lewis Agreement has been, is, or will at some future date be terminated, or that said agreement is or shall at some future date be nugatory or void at any time during Government possession of the bituminous coal mines; and from breaching any of their obligations under said Krug-Lewis Agreement, and from coercing, instigating, inducing or encouraging the mine workers at the bituminous coal mines in the Government's possession, or any of them, or any person, to interfere by strike, slow down, walkout, cessation of work, or otherwise, with the

operation of said mines by continuing in effect the aforesaid notice or by issuing any notice of termination of agreement or through any other means or device; and from interfering with or obstructing the exercise by the Secretary of the Interior of his functions under Executive Order 9728; and from taking any action which would interfere with this Court's jurisdiction or which would impair, obstruct, or render fruitless, the determination of this case by the Court." [R. 61.]

The restraining order by its terms provided that it would expire at 3:00 o'clock p. m. on November 27, 1946, unless extended. Plaintiff's motion for a preliminary injunction was set down for hearing on November 27, 1946, at 10:00 o'clock a. m. [R. 61, 507, 508.]

21. The defendants, and each of them, were duly and properly served at 2:15 p. m. on November 18, 1946, with a certified copy of the temporary restraining order, together with copies of the verified complaint, including and embracing plaintiff's prayer and motion for a temporary restraining order, and the supporting affidavits. [R. 61, 63–64.]

22. Following the service upon them of the Court's temporary restraining order, the defendants, as hereinafter more fully appears, have taken no action designed to withdraw the notice of alleged termination dated November 15, 1946, but, on the contrary, have wilfully, wrongfully, and deliberately permitted said notice to continue in effect. [R. 503–505, 313–314.] The defendants, and each of them, knew that, in accordance with their own established policy, if the notice of alleged termination

were not withdrawn and were permitted to continue in effect, a work stoppage at the mines would occur at midnight November 20, 1946. [R. 6, 37, 282–283, 483.] As a result of the foregoing, on or about November 18, 1946, there commenced at said coal mines a gradual walkout, strike, cessation of and refusal to work by the members of defendant Union, which increased daily until 12 o'clock midnight of November 20, 1946. [R. 67–68.] Since that hour and at all times thereafter there has been a walkout, strike, cessation of and refusal to work by substantially all of the members of the defendant Union employed at coal mines in the possession of the Government. [R. 289–290, 487.]

23. On November 21, 1946, the United States, by its Attorney General, filed a petition, supported by affidavits, for a rule to show cause why the defendants should not be punished as and for a contempt of this Court, alleging that the defendants, in defiance of the terms of said temporary restraining order, had wilfully, wrongfully and deliberately disobeyed said order. [R. 66–72.]

24. On said petition and affidavit, the Court on the same day issued a rule to show cause ordering said defendants to appear before this court on November 25, 1946, to show cause why they should not be punished as and for contempt of this court. It was further ordered that if upon the return of said defendants it should be found that the alleged contempt was not sufficiently purged, a trial should be held on November 27, 1946, and the defendants should, unless waived by them, be tried upon the charges of contempt by this

court with an advisory jury to be empaneled by the court. [R. 72-73.]

25. On the return day, the defendants, being represented by counsel [R. 501], and with the defendant John L. Lewis personally present in court [R. 313], made an oral return to the rule to show cause as follows:

"The defendants and each of them respectfully state to the Court that they and each of them, since the giving of said notice of November 15, 1946, since the issuance of Your Honor's temporary restraining order of November 18, have done no act nor spoken any word pertaining to said notice or in reference to permitting it to continue in effect.

"The status of the notice and the position of each of the defendants in reference thereto remains today in the status which existed at the time of its giving and at all times subsequent thereto.

"The defendants and each of them, Your Honor, therefore respectfully say to this Court that the situation with respect to such notice of November 15, 1946, for the reasons herein stated remains unchanged.

"The defendants and each of them respectfully deny the jurisdiction of this Honorable Court to have issued the temporary restraining order and the rule to show cause issued thereunder.

"The defendants will be prepared to present arguments on this question on November 27, the time fixed by the Court in its order, as we understand it, for the hearing of this case." [R. 503.]

26. Thereupon, the Court, finding that a contempt had been alleged and that the alleged contempt had not been sufficiently

purged by the defendants' return, ordered that the matter be set down for trial on November 27, 1946. [R. 500, 507, 508.]

27. On November 26, 1946, defendants filed and served upon plaintiff a motion to discharge and vacate the rule to show cause in which they asserted that the Court was without jurisdiction over the subject matter of the cause; that equity will not enjoin the commission of a crime; that this was a proceeding for a criminal contempt; the defendants suggesting that it was based wholly on hearsay, information and belief and should have been presented as an independent proceeding; and, finally, that the restraining order was void because it contravened the First, Fifth, and Thirteenth Amendments to the Constitution of the United States. [R. 82–85.]

28. On November 27, 1946, and again on November 29, 1946, with the defendant Lewis personally in court on both days and both the defendant Union and the defendant Lewis represented by counsel, arguments were presented in support of and in opposition to the motion to discharge and vacate the rule to show cause. [R. 115–201.]

29. On November 27, 1946, before the expiration date of the temporary restraining order issued on November 18, 1946, the court, on plaintiff's application and for good cause shown, over objection of defendants extended said temporary restraining order for a like period of ten days. [R. 85–86, 158–161.]

30. On November 29, 1946, this court denied defendants' motion to discharge and vacate the rule to show cause and set forth its reasons therefor in an opinion which

appears in the record. [R. 90, 202–204.] Thereupon, the defendants entered pleas of not guilty, waived their rights, if any, to an advisory jury and the case proceeded to trial before the court. [R. 205.]

31. The defendants were, before the trial, apprised of the fact that they were charged with both a civil and a criminal contempt [R. 66–68, 72–73, 82, 84, 196–198, 204, 267]; were subsequently advised, in advance, of the names and identities of witnesses to be called by the plaintiff [R. 241–242]; and were, by their own admission in open court, liberally informed as to all relevant information and were given every opportunity to meet the contentions of the plaintiff. [R. 267.]

32. A full and complete hearing extending over a period of four days, was had at which the parties were given full opportunity to present evidence, to cross-examine witnesses, to present argument and to avail themselves of any and all rights to which they might be entitled. [R. 111–334, 449–508.]

33. Throughout all hearings on this matter, commencing with the hearing on November 25, 1946, defendant John L. Lewis was personally present before this court.

34. The defendants, and each of them

(a) have at all times since 2:15 p. m. on November 18, 1946 permitted to continue in effect the notice of alleged termination given by the defendant John L. Lewis to the Secretary of Interior on November 15, 1946; [R. 503.]

(b) have instigated, induced and encouraged the workers at said mines to interfere, by strike, slowdown, walkout and cessation of work, with the operation of

said mines by continuing in effect the notice of November 15, 1946, purporting to terminate the Krug-Lewis Agreement; [R. 6, 37, 282–286, 484, 503.]

(c) have completed the calling of a strike and have completed the instigation, inducement, and encouragement of the mine workers at the bituminous coal mines in the Government's possession to interfere, by strike, slow-down, walkout and cessation of work, with the operation of said mines, by permitting to remain outstanding the aforesaid notice of November 15, 1946, purporting to terminate the so-called Krug-Lewis Agreement; [R. 6, 37, 282–286, 484, 503]

(d) have instigated, induced and encouraged the workers at said mines to interfere by strike, slow-down, walkout, and cessation of work, with the operation of said mines, thereby interfering with and obstructing the exercise by the Secretary of the Interior of his functions under Executive Order No. 9728 and under the War Labor Disputes Act, and with the performance of other governmental functions, by failing to withdraw the notice of November 15, 1946, purporting to terminate the Krug-Lewis Agreement, and by failing to announce to and notify the members of defendant union employed at said mines that said notice of November 15, 1946 was withdrawn, and by failing to notify said members of defendant Union that there is in force and in effect an agreement or contract between the defendant Union and the United States of America, that is, the so-called Krug-Lewis Agreement; and [R. 2, 6, 9, 36, 37, 207, 208, 210, 211, 282–286, 289, 345–398, 484, 486, 503]

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(e) have interfered with this court's jurisdiction and have impaired and obstructed the determination of this case by the court. [R. 6, 37, 67–68, 282–286, 289–290, 484, 487, 503.]

35. As of November 20, 1946 there were approximately 76,000,000 tons of bituminous coal on hand and if the current work stoppage continues production would then be at the rate of about 658,000 tons a week or about 5.3 percent of the normal production of about 12,500,000 tons a week. [R. 37, 290–291.] Normal requirements of bituminous coal during a three months' period beginning December 2, 1946 would be at the rate of approximately 54,000,000 tons a month and if all available coal could be treated as a pool, although such ideal distribution cannot as a practical matter be obtained, to be used for an assumed normal consumption the supply on hand on November 20, 1946 would last about 37 days. [R. 291–292.]

36. The characteristics of the economy of the United States make it peculiarly vulnerable to a stoppage in coal production, largely because of its great dependence on machines, about 43 percent of all energy produced in the United States being derived from bituminous coal. [R. 293.] Four-fifths of all energy used in driving locomotives on Class 1 railroads is derived from bituminous coal; about four-fifths of all fuels and energy-producing materials used in the production of steel is derived from bituminous coal; over 50 percent of all energy used in the production of electric power by public utilities is derived from bituminous coal; and about four-fifths of all energy obtained for electric power is derived from bituminous coal. Over 80

percent of Class 1 railroads, over 60 percent of public utilities and steel-producing industries, would have to shut down completely within sixty days if the current coal stoppage continues for that length of time. [R. 294.]

37. If the current work stoppage were to continue for a sixty-day period there would be a decline in total employment of at least 5,000,000 full time workers and the national income would decline from the present rate of $170,000,000,000 per year to a rate of $150,000,000,000 per year with a resulting loss in income paid to workers at the rate of considerably more than $1,000,000,000 per month, and with a loss of national income, a fraction of which has been estimated at one billion to one and one-quarter billion dollars during that period. [R. 294.] A loss of even one billion dollars in income payments, only a fraction of the loss which would actually be suffered from a continued work stoppage, would result in a loss to the United States of tax revenues of about $280,000,000. [R. 296–297.]

38. The current work stoppage has caused and will continue to cause irreparable injury to the plaintiff, to the people of the United States and to the industry and economy of the United States. [R. 1–9, 35–51, 90–99, 205–334, 335–488.]

39. The coal produced by the mines now affected by the work stoppage is indispensable for the continued operation of the national economy during the transition from war to peace. [R. 2, 9, 335.]

CONCLUSIONS OF LAW

1. The United States in seizing the mines pursuant to Executive Order 9728 and in

operating them following such seizure was at all times exercising its sovereign functions derived from the Constitution and laws of the United States.

2. The defendants, and each of them, have obstructed and interfered with the exercise by the United States of its sovereign functions.

3. The defendants, and each of them, have unlawfully coerced, instigated, induced, and encouraged the mine workers at the bituminous coal mines in the Government's possession to interfere by strike, slow-down, walkout, cessation of work, or otherwise, with the operation of the coal mines.

4. By reason of the facts found in paragraphs numbered 34 (a) through 34 (e), above, the defendants, and each of them, have at all times since the service upon them on November 18, 1946, of the temporary restraining order of this Court, wilfully, wrongfully and deliberately disobeyed and violated the terms of the said temporary restraining order, and have obstructed and interfered with the determination of this case by the Court.

5. The defendant United Mine Workers of America at all times since the service upon it on November 18, 1946, of the temporary restraining order, has, beyond a reasonable doubt, committed and continues to commit a civil contempt of this Court.

6. The defendant United Mine Workers of America at all times since the service upon it on November 18, 1946, of the temporary restraining order, has, beyond a reasonable doubt, been guilty, and is now guilty of a criminal contempt of this Court.

7. The defendant John L. Lewis at all times since the service upon him on November 18, 1946, of the temporary restraining

order, has, beyond a reasonable doubt, committed and continues to commit a civil contempt of this Court.

8. The defendant John L. Lewis at all times since the service upon him on November 18, 1946, of the temporary restraining order, has, beyond a reasonable doubt, been guilty and is now guilty of a criminal contempt of this Court.

U. S. GOVERNMENT PRINTING OFFICE, 1947

FILE COPY

Office - Supreme Court, U. S.
JAN 11 1947
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

Nos. 759, 760

UNITED STATES OF AMERICA,

Petitioner,

vs.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, and JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA

Respondents

No. 781

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent

No. 782

JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent

No. 811

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, and JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR UNITED MINE WORKERS OF AMERICA AND JOHN L. LEWIS

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

Nos. 759, 760

UNITED STATES OF AMERICA,

Petitioner,

vs.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, and JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA,

Respondents

No. 781

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent

No. 782

JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

No. 811

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, and JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR UNITED MINE WORKERS OF AMERICA AND JOHN L. LEWIS

The Opinion of the Court Below

The United States District Court for the District of Columbia did not file any written opinion in connection with any of the orders and judgments here involved. The court's

oral opinion denying the motion to vacate and discharge the rule to show cause why defendants below should not be punished for contempt is set forth on pages 202, 203 and 204 of the Record.

Statement As to Jurisdiction

The Court has jurisdiction over these cases under the provisions of Section 240(a) of the Judicial Code, as amended, 28 U. S. C. 347(a).

The temporary restraining order was issued on November 18, 1946 (R. 69) and was extended on November 27, 1946 (R. 85). The preliminary injunction was issued on December 4, 1946 (R. 102). The judgments and sentences in the contempt cases were entered on the same day, December 4, 1946 (R. 101, 102).

Defendants below filed notices of appeal in the District Court from the judgments and sentences for contempt on December 5, 1946 (R. 496, 497), and filed a notice of appeal from the restraining orders and preliminary injunction on December 19, 1946.

On December 6, 1946, the Government filed the Record in the United States Court of Appeals for the District of Columbia (R. 554) and petitioned this court for writs of certiorari (Nos. 759 and 760) which were granted on December 9, 1946.

On December 12, 1946, the United Mine Workers of America and John L. Lewis petitioned this Court for writs of certiorari (Nos. 781, 782) to review the judgments for contempt, which were granted on December 16, 1946.

On December 21, 1946, the United Mine Workers of America and John L. Lewis petitioned this Court for a writ of certiorari (No. 811) to review the temporary restraining orders and the preliminary injunction. This Court granted the petition on December 23, 1946, and ordered that the case be consolidated with Nos. 759, 760, 781 and 782.

None of these cases have been heard, submitted to, or decided by the United States Court of Appeals for the District of Columbia and "the public interest will be promoted by a prompt settlement in this Court of the questions involved." (Rule 39, Supreme Court Rules.)

Statement of the Case

As a result of a labor dispute between the owners of the bituminous coal mines and the United Mine Workers of America, which dispute is still outstanding and unresolved (R. 235, 238, 240), the Government, on May 21, 1946, took possession of the bituminous coal mines. Thereafter the Government entered into a collective agreement with the United Mine Workers (hereinafter called the "Krug-Lewis" agreement) covering wages, hours and working conditions (R. 399). On November 15, 1946, following abortive attempts to resolve differences over the administration and application of the Krug-Lewis agreement and to negotiate improved conditions of work (R. 235, 238, 239, 271, 408-409, 410-411) John L. Lewis notified the Government that the agreement was terminated (R. 413).

On November 18, 1946, the Government filed its complaint (R. 1) for a declaratory judgment to resolve conflicting contentions between the parties respecting the terminability of the Krug-Lewis agreement (R. 6), and asking, too, for a preliminary injunction "pending the final determination of this cause"; and for a temporary restraining order "pending issuance of the aforesaid preliminary injunction" (R. 8).

To this date there has been no hearing upon the primary relief sought by the Government, namely, the declaratory judgment. On November 18, 1946, the District Court, without notice or hearing, issued a temporary restraining order to expire at three o'clock P. M., on November 27, 1946, and

set the time for hearing plaintiff's motion for a preliminary injunction at ten o'clock A. M., November 27, 1946 (R. 60). Among other things, the order prohibited defendants, their agents, servants, employees and attorneys, and all persons in concert or participation with them from permitting to continue in effect the notice terminating the Krug-Lewis agreement, from giving publicity to any such notice and from inducing or encouraging by any means or device any person to interfere by cessation of work or otherwise with the operation of the coal mines in the Government's possession.

On November 21, 1946, the District Court issued a rule to show cause why defendants should not be punished for contempt of court, and ordered a trial be held at 10:00 A. M. on November 27, 1946, in the event that it shall have been found by returns due on November 25th that defendants had not sufficiently purged the alleged contempt (R. 72).

Pursuant to the rule to show cause, defendants appeared in court on November 25th and, through counsel, denied the jurisdiction of the District Court to have issued the temporary restraining order (R. 503).

On November 26, 1946, defendants filed a motion to discharge and vacate the rule to show cause (R. 82), asserting, *inter alia*, that the restraining order was void because it was, under the Constitution and statutes of the United States, beyond the jurisdiction of the Court; that civil contempt was not appropriate in the instant case; and that proper procedures for criminal contempt had not been followed.

On November 27, 1946, the District Court, over objection and during the course of argument on the motion to discharge and vacate the rule, extended the temporary restraining order (R. 160).

On November 29, 1946, the District Court overruled the motion to discharge and vacate the rule (R. 90).

On December 3, 1946, after trial on the issues raised by the rule to show cause, the District Court found the United Mine Workers of America and John L. Lewis, individually, guilty of both civil and criminal contempt (R. 90) and, on December 4, 1946, imposed fines of $3,500,000 and $10,000 respectively. On the same day, December 4, 1946, the Court issued a preliminary injunction imposing the same restraints contained in the original temporary restraining order.

Specification of Errors

The District Court erred in the following respects:

1. In holding that the Norris-La Guardia Act (47 Stat. 70, 29 U. S. C. 101-115) and the Clayton Act (38 Stat. 738, 29 U. S. C. 52) did not apply to the instant case and did not prevent the issuance of the temporary restraining orders and the preliminary injunction.

2. In imposing restraints which deprived persons of rights guaranteed by the First and Thirteenth Amendments to the Constitution of the United States.

3. In imposing sentences for the alleged contempt of orders that were void because they were beyond its jurisdiction and because they were in conflict with the Constitution.

4. In depriving defendants below of the right of jury in the trial for the alleged contempts.

5. In holding the United Mine Workers of America, an unincorporated association, responsible for the allegedly wrongful and criminal acts of individuals in the absence of clear proof of actual participation in, or actual authoriza-

tion of, such acts, or of actual ratification of such acts after actual knowledge thereof.

6. In issuing a rule to show cause why defendants below should not be held in contempt where the said rule was supported merely by an affidavit based on hearsay and where the said rule failed to describe the proceeding as being in criminal contempt and where the said rule did not institute a separate and independent proceeding.

7. In holding the United Mine Workers of America and John L. Lewis, individually, guilty of civil contempt although the United States of America did not allege or prove any damage to private property or interest and was without special statutory authorization to bring civil contempt proceedings, and although the relief sought was punitive and not remedial.

8. In imposing fines which are arbitrary and excessive and which are in no way related to any competent evidence.

9. In holding that there was "good cause" shown for extending, on November 27, 1946, the *ex parte* temporary restraining order of November 18, 1946.

Summary of Argument.

I

A. The Norris-La Guardia Act and Section 20 of the Clayton Act are the results of the affirmative conclusion of Congress that the Government, through the courts, had greatly abused its preexisting powers in cases involving or growing out of labor disputes. To hold, as did the court below, that these statutes do not mention the Government—upon which holding the court below predicated its application of the rule of statutory construction whereby sovereignties are not included in statutes which do not specifically or by

necessary implication mention them—is, therefore, to ignore the self-evident fact that the Federal Judiciary, no less than executive agencies of the Government, is part and parcel of the Government.

B. Congress has plenary power under the Constitution to fix and limit the jurisdiction of inferior Federal courts. That power is exclusive and cannot be usurped by the Judiciary or by the Executive Department of the Government. The proposition that the anti-injunction acts do not apply where the Executive Department of the Government is a party plaintiff confounds the elementary principle that no one can alter the jurisdiction of inferior Federal courts that has been clearly established by Congress.

C. The unequivocal language of the anti-injunction acts showing that they must apply to cases instituted by the Government is overwhelmingly supported by their legislative history. The major opposition against the enactment of the Norris-La Guardia Act was premised on the point that it would bar the Department of Justice from obtaining injunctive relief in labor disputes. Amendments were offered which expressly sought to preserve the right of the Government to proceed in the manner done in this case. These amendments were overwhelmingly rejected for the all-sufficient reason that some of the most outrageous abuses perpetrated by the courts in labor disputes were in cases instituted by the Government.

D. Congress confirmed its determination to preclude the Government from obtaining injunctions in labor disputes when it enacted the War Labor Disputes Act. The legislative history of that act discloses several unsuccessful attempts to allow the Government the remedy of injunction in cases of interference by labor disputes with production in Government-seized plants. Those who advanced these

suggestions recognized and characterized them as constituting modifications of the Norris-La Guardia Act. In rejecting these suggestions Congress not only confirmed its desire to apply the anti-injunction acts to cases instituted by the Government but also made conclusively clear its intention to limit the Goverr nt in cases like the one at bar to the single remedy of criminal prosecution. This, standing by itself, compels reversal of the orders and judgments of the court below because the only possible status the Government has in these proceedings derives from the War Labor Disputes Act.

E. This and other courts have held that the Norris-La Guardia Act applies to Government suits. The Government, itself, has formally conceded before this Court that the Norris-La Guardia Act prevents it from obtaining injunctions in labor disputes. The court below made no discernible effort to distinguish the instant case from those authoritative decisions. Even if the court below may have implied some distinction by its finding that the Government was performing a sovereign function in administering the bituminous coal mines, the record establishes beyond refute that such function cannot be considered "sovereign" in the only appropriate sense that can possibly give it relevance to any of the issues in this case.

F. It has not been argued—and in the face of the record it cannot be seriously argued—that, aside from the circumstance of the Government being a party to the proceedings, the case does not involve or grow out of a labor dispute or that there has been compliance with the requirements of the Norris-La Guardia Act.

II

The restraining orders and preliminary injunction deprive persons of rights guaranteed by the First and Thirteenth

Amendments to the Constitution. They prohibit any discussion on a matter of public concern and they compel persons to work for the private profit of others against their will. The court below repeatedly indicated that the orders merely obligated John L. Lewis to cancel the notice of November 15, 1946, and did not affect the miners and other persons. But obviously, the plain language of the court's orders, and not the court's subsequent and unfounded interpretation of its meaning, determines their scope and validity. And under that plain language the miners and others were deprived of basic constitutional rights.

III

A. Since the restraining orders were void by reason of their conflict with the anti-injunction acts and the Constitution, they are nullities which cannot be contemned. The Government argued in the court below that contempt proceedings would lie for violation of the instant orders even if they were issued in violation of the Norris-La Guardia Act, relying on the decision of this Court in *U. S.* v. *Shipp*, 203 U. S. 563, and the decision of the Circuit Court of Appeals for the Fifth Circuit in the case of *Carter* v. *U. S.*, 135 Fed. (2d) 858. The *Shipp* case is readily distinguishable on the ground that the jurisdiction of the court to issue the preliminary order there contemned was not limited by the Constitution or by any act of Congress. The decision in the *Carter* case is patently erroneous. If adopted by this Court, it would completely emasculate the Norris-La Guardia Act which is premised on the indisputable fact that there is no *status quo* in labor disputes. If Federal courts would be authorized to punish contempts of unlawful orders that are ostensibly designed to maintain the *status quo* then most, if not all, of the evils of "Government by injunction" would be effectively restored.

B. In emphasizing the foregoing point we show that in the instant case the court below did not maintain the *status quo*, but in affirmatively directing the cancellation of the notice of termination actually decided the merits of the primary case. *Pendente lite* relief cannot be granted where it has the effect of resolving the basic litigation particularly where, as here, the defendant is in no manner secured against resulting injury and loss. Accordingly, regardless of whether or not the anti-injunction acts apply and regardless of whether or not the restraints imposed are constitutional, the preliminary injunction should, on ordinary principles of equity, be dissolved.

C. Although we earnestly urge this Court to pass on the *Carter* rule so as to remove the confusion created by its announcement, nevertheless, even assuming that the *Carter* rule is correct, the judgments and sentences for contempt must be reversed for these reasons: (1) That rule allows punishment for criminal contempt only, whereas the court below imposed a fine for both civil and criminal contempt without allocating what portion of the fine was for the criminal contempt and what for the civil contempt. (2) Under Section 111 of the Norris-La Guardia Act the defendants below were entitled to but denied the right of trial by jury.

IV

Assuming, *arguendo*, that John L. Lewis or the individual miners did contemn the temporary restraining order of November 18, 1946, nevertheless the judgment against the United Mine Workers of America must be reversed because there has been no showing, much less the "clear proof," required by Section 106 of the Norris-La Guardia Act, that the association had actually authorized, participated in or ratified the allegedly unlawful acts of any person. Even if the Norris-La Guardia Act did not apply, there is lacking

the degree of proof necessary under common law principles to hold the United Mine Workers responsible for the unlawful acts of individuals.

V

Independent of any of the foregoing arguments the judgments in contempt must be reversed because the status of the Government in this case is not such as to entitle it to the remedial relief of civil contempt since it asserts no property interest and is not expressly authorized by any Act of Congress to institute civil contempt proceedings in a case of this kind and because the following requirements in proceedings for criminal contempt have not been met: (1) the rule to show cause was supported by an affidavit of a person other than a prosecuting officer and was based on hearsay only; (2) the proceeding was ancillary to the main cause and not a separate and independent one; (3) the requirements of Rule 42(b) of the Federal Rules of Criminal Procedure, and particularly the requirement that criminal contempt proceedings be defined as such in the pleadings, were not met.

VI

Assuming the propriety of any fines in this case, the fines actually imposed cannot be sustained because they are excessive. The fine against John L. Lewis is two times the amount fixed by Congress in the War Labor Disputes Act and the fine against the United Mine Workers of America is thirty-five hundred times that amount. And that, in spite of the fact that Congress intended that the criminal procedures prescribed by the War Labor Disputes Act shall be the sole and exclusive remedy available to the Government. In any event, a fine imposed for civil contempt must be related to the injury sustained by the plaintiff. The record in this case is entirely barren of any such relationship.

VII

It was error to extend the temporary order of November 18, 1946. Rule 65 of the Federal Rules of Civil Procedure directs courts that have issued *ex parte* restraining orders to give precedence to the hearing for the preliminary injunction over all other cases. The court below ignored that requirement by giving precedence to the hearing on the contempt issues. The court assigned the fact of that hearing as "good cause" for extending the initial order. After extending the order from the bench, the court went so far as to sign a written order stating the "good cause" to be the hearing for the preliminary injunction—a statement the inaccuracy of which is nothing less than incredible.

ARGUMENT

I

The Norris-La Guardia Act and Section 20 of the Clayton Act Apply to This Case. Their Application Here Was Rejected. Hence the Restraining Orders Are Nullities.

A. The Norris-La Guardia Act Deals With Jurisdiction of Federal Courts and Not With Plaintiffs or Their Substantive Rights. Such Jurisdiction Is Completely and Exclusively Subject to Congress' Control and Cannot Be Enlarged at the Mere Request of Any Party.

This is the first attempt on the part of the Government of the United States since the enactment of the Norris-La Guardia Act[1] in 1932 to apply the extraordinary remedies of

[1] The Norris-La Guardia Act (47 Stat. 70) is printed in full on pages 43-52 of the appendix to the Government's petition. Section 20 of the Clayton Act (38 Stat. 738) is set forth on page 52 thereof. That these two statutes are directly related and that they must in effect be read as a single text is established by *U. S.* v. *Hutcheson*, 312 U. S. 219.

The Congressional Committee reports on the Norris-La Guardia Act may be found in the appendix to this brief.

ex parte restraining orders and contempt proceedings against a labor organization and its officials in a situation which clearly and on its face contains all the familiar elements of a labor dispute.

Respectfully and earnestly we assert that the Government in instituting these proceedings and the court below in completely adopting the theories, arguments and recommendations advanced by the Government disregarded completely the plain, unequivocal language of the federal anti-injunction statutes, their indisputable purpose and scope and the controlling decisions of this Honorable Court. So much so, as reluctantly to compel the suggestion that public hysteria and political expediency, rather than the dispassionate and judicial application of established legal principles, have thus far dominated and determined these proceedings.[2]

In ruling that the anti-injunction statutes were inapplicable to the instant case the court below relied exclusively on the principle that "where the Government was not specifically mentioned or included by necessary implication . . . the language of the act did not apply to the Government" (R. 202). Even if we accept the propriety of the principle so enunciated, it is clear that it has been completely misapplied by the court below.

The courts of the United States—no less, certainly, than the Department of Interior or the Department of Justice—are part and parcel of the "Government". The Norris-La Guardia Act not only mentions the Government, it is expressly designed to limit the powers of Government as

[2] "A community whose judges would be willing to give it whatever law might gratify the impulse of the moment would find in the end that it had paid too high a price for relieving itself of the bother of awaiting a session of the legislature and the enactment of a statute in accordance with established forms." Mr. Justice Cardozo, in *Doyle* v. *Hofstader*, 257 N. Y. 244, 268.

theretofore exercised by a fundamental branch of Government, the courts. Indeed, it would be difficult in the extreme to conceive of any legislation that is more directly and pointedly addressed to the limitation of governmental powers.

The Norris-La Guardia Act is styled "An Act to amend the Judicial Code and to define and *limit the jurisdiction of courts* sitting in equity . . .". (Emphasis supplied.) It was "intended drastically to curtail the equity jurisdiction of Federal Courts in the field of labor disputes" (*Milk Wagon Drivers Union* v. *Lake Valley Farm Products, Inc.*, 311 U. S. 91, 101) in order to put a conclusive terminus to "abuses of judicial power in granting injunctions in labor disputes" (*Ibid.*, quoting from S. Rep. No. 163, 72nd Cong., 1st Sess., p. 8). If—as cannot be denied—Congress in the full and lawful exercise of its constitutional powers [3] qualified a specific judicial power, it is beyond conception that the qualification could be destroyed upon the mere request of an executive agency of Government. "The judicial power of the United States . . . is . . . dependent for its distribution and organization, and for the modes of its exercise, *entirely upon the action* of Congress," (emphasis supplied), *Cary* v. *Curtis*, 3 How. 236, 245,[4] and not upon the caprice, demand or formal action of any other branch of government.

The court below sought to apply the ancient English rule of statutory construction and interpretation that "The

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[3] Art. III, Secs. 1 and 2; Frankfurter & Greene, *The Labor Injunction*, 210, 211; Frankfurter and Landis, *Power of Congress Over Procedure in Criminal Contempts in "Inferior Courts"—A Study in Separation of Powers*, 37 Harv. L. Rev. 1010, 1059; Frankfurter & Greene, *Congressional Power Over The Labor Injunction*, 31 Columbia L. Rev., 385, 407-408.

[4] See also *Sheldon et ux.* v. *Sill*, 8 How. 441; *Ex Parte Robinson*, 19 Wall. 505; *Holmes* v. *Goldsmith*, 147 U. S. 150; *Kline* v. *Burke Constr. Co.*, 260 U. S. 226, 233-5. *Myers* v. *United States*, 272 U. S. 52, 128.

King is not bound by any Act of Parliament unless he be named therein by special and particular words" (R. 202).

This rule of statutory construction, and it is no more than that,[5] had perhaps its earliest and certainly its most elaborate discussion and elucidation by Lord Chief Justice Coke in the case of the *Master and Fellows of Magdalen College in Cambridge*, 11 Coke 66b, decided about 1612.

In holding that the sovereign was bound by the Act there in question, the Lord Chief Justice relied upon an exception to the general rule even then widely recognized and applied (p. 72a):

> "That the King shall not be exempted by construction of law out of the general words of Acts made to suppress wrong; because he is the fountain of justice and common right, and the King being God's Lieutenant cannot do a wrong."

He referred to the cases of *Alton Woods*, 1 Coke 44b, and *Lord Berkley*, Pl. Com. 246, where there was in question the application to the King of the statute *de donis* in which he was not expressly named and which gave a remedy for the wrongful alienation of estates tail. In these cases it was adjudged that the King was bound by the Act and the first of the reasons given was that

> "Because such alienation before the statute was wrongful, although such wrong wanted remedy; and there it is said, it would be a hard argument to grant, that the statute which restrains men from doing wrong and ill, should permit the King to do it."

Wrongful subversion of the traditional equity jurisdiction by courts of the United States in cases involving or growing out of labor disputes was the evil sought to be remedied by the Norris-La Guardia Act. Since, for the

[5] *Green* v. *United States*, 9 Wall. 655, 658; *United States* v. *Cooper Corporation*, 312 U. S. 600.

purpose of correcting that evil, the Congress saw fit to withdraw certain jurisdiction from the courts, it would, indeed, to use the mild language of Lord Coke, "be a hard argument to grant" that only the Government should be permitted to perpetuate the evil and the wrong (*Nardone* v. *U. S.*, 302 U. S. 379, 384; *U. S.* v. *Arizona*, 295 U. S. 174, 184), even to the extent of invoking a jurisdiction which no longer exists.

This Court has on many occasions applied to sovereign bodies statutes not specifically mentioning them even where those statutes were in derogation of their substantive rights.[6] How much stronger is the compulsion to apply to such sovereign bodies an act dealing directly with jurisdiction, emphasizing procedural requirements and growing out of abuses in cases where the Government was the complaining party.

In *United States* v. *Rice*, 327 U. S. 742, the majority of this Court[7] held (p. 773):

> "To whatever extent the Government may be excluded from the operation of a statute in which it is not named, it is clear that the United States cannot assert, by virtue of its sovereignty, a right of appeal

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[6] *New York* v. *United States*, 90 L. Ed. 265 (Adv. Sheets); *South Carolina* v. *United States*, 199 U. S. 437; *Cook County National Bank* v. *United States*, 107 U. S. 445; *Allen* v. *University System*, 304 U. S. 439; *United States* v. *California*, 297 U. S. 175; *Helvering* v. *Powers*, 293 U. S. 214; *Ohio* v. *Helvering*, 292 U. S. 360.

[7] The reasoning of the minority in that case cannot apply here. The dissent was premised on the argument that the Act of April 12, 1926, 44 Stat. 239, c. 115, granting the United States the right to remove to federal courts suits involving a property interest of a restricted Indian of the Five Civilized Tribes should not be governed by a prior statute passed in 1887 (24 Stat. 552, c. 373) which disallows appeals from orders remanding causes removed from the state courts. It was argued that the more recent act, being "an independent statute," should not be governed by the older act, particularly where the evil sought to be eliminated by the older act would not be revived by Government appeal from the order remanding the case back to the state court. In the instant case, of course, there is nothing comparable to the 1926 statute which affirmatively confers an express right upon the Government. Moreover, as will be abundantly

> which no statute has conferred, or which, if conferred, has been abolished."

In *Green* v. *United States, supra,* involving a procedural question it was "urged that the Government is not bound by a law unless expressly named". This Court flatly rejected that contention, saying (p. 658):

> "We do not see why this rule of construction should apply to acts of legislation which lay down general rules of procedure in civil actions. The very fact that it is confined to civil actions would seem to show that Congress intended it to apply to actions in which the Government is a party, as well as those between private persons."

See also *Custer* v. *McCutcheon,* 283 U. S. 514; *Fink* v. *O'Neil,* 106 U. S. 272; *United States* v. *Union Pacific R. R. Co.,* 105 U. S. 263; *United States* v. *Knight,* 14 Pet. 301, 10 L. Ed. 465.

There is no difference in the arrogation of jurisdiction in this case by the court below than one, say, wherein the Government should apply to a Federal District Court to hear a case over which the Supreme Court has exclusive original jurisdiction under Article III of the Constitution. As shown, Congress alone has Constitutional power to fix the jurisdiction of "inferior courts". Congress, having found that intervention by Federal courts in labor disputes by way of restraining orders and injunctions had been much abused, determined that the Federal courts should thereafter function in such matters only with completely defined procedural and substantive safeguards. Federal courts were deprived of power to act otherwise than in strict conformity with such safeguards no matter who the plaintiff

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demonstrated, the evils sought to be eliminated by the Norris-La Guardia Act were extremely conspicuous in cases involving the Government, cases which were the subject of elaborate comment and criticism throughout the legislative debates.

may be.[8] For otherwise, we should be forced to the impossible and even absurd proposition implicit in the decision of the court below, namely, that the Federal courts may not abuse their equity jurisdiction except when some Federal agency requests them so to do! And that, in spite of the fact that among the abuses expressly condemned by Congress were those incident to labor injunctions obtained by the Government.

B. The Legislative History of the Norris-La Guardia Act Clearly Establishes That It Applies to Suits Instituted By the Executive Department of the Government.

During the course of the debates in the House of Representatives[9] the principal argument against passage was directed at the very point here involved—the application of the Act to the Government. Representative Beck was the outstanding opponent of the bill. He discussed at length[10] the *Debs* case[11] which involved an injunction obtained by the then Attorney General and described it as "the cause célèbre from which sprang this agitation to de-

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[8] See *Schivera* v. *Long Island Lighting Co.* (decided by the New York Court of Appeals on October 3, 1946, and reported in 18 L. R. R. M. 2479). The court said (p. 2481):

> "That statute, like its prototype, the Federal Norris-La Guardia Act, prohibits the issuance of any injunction . . . . like the one here granted. . . . Jurisdiction to issue any such injunction is, in so many words, denied to the courts. *It makes no difference who is the plaintiff. There is no jurisdiction to issue such an injunction on anyone's application.* Such are the plain words of the statute, and the obvious intent makes it even plainer." (Italics supplied)

[9] 75 Cong. Rec. 5462-5511.

[10] 75 Cong. Rec. 5472, 5476.

[11] *In Re Debs*, 158 U. S. 564. "As for the *Debs* case," upon which the Government heavily relies in this case (R. 55) "what dispassionate student of American Society really believes that that case, in its sequelae, has made for peace in industry or enhanced confidence in the legal order?" Frankfurter & Greene, *Congressional Power Over The Labor Injunction*, 31 Columbia L. Rev. 385, 412.

stroy the power of the Federal courts to issue such injunctions."[12] Anxiously desiring that this governmental power be retained, he observed: "'If the bill now under consideration had then been a law, such summary action would have been impossible", a statement of particular significance in view of his experience and high standing as a lawyer and as former Solicitor General. He likewise discussed at length the railway shopmen's strike[13] of 1922 when he was Solicitor General and, pointing out that in that case, too, injunctions were issued at the instance of the Attorney General, made clear that such injunctions could not be obtained under the provisions of the bill.[14]

Mr. La Guardia made clear the imperative need to apply the remedial legislation he was sponsoring to cases brought by the Government by his sharp criticism[15] of the manner in which Attorney General Daugherty obtained the notorious Wilkerson injunction (p. 5479):

> "Let me tell you how that was obtained—this is not hearsay, not from what somebody else tells me, but from the 'inside story' as told by Harry Daugherty himself. . . . Daugherty says in his book:
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> "'After looking around for a judge, Judge Wilkerson was finally selected. He was out of the city, but

[12] 75 Cong. Rec. 5476.

[13] *U. S.* v. *Railway Department Employees*, 286 Fed. 228 (N. D. Ill.).

[14] 75 Cong. Rec. 5473.

[15] See also, Frankfurter, *Law and Politics* (1939), which reprints an article (p. 218) *"Labor Injunctions Must Go"*, first published in 1922: "Never in American history has an appeal by the Government to the courts . . . been received with such widespread condemnation as the injunction granted to Attorney General Daugherty at Chicago. Criticism does not abate with time nor with reflection. . . . The simple truth is that Harry M. Daugherty . . ., with the complicity of Judge Wilkerson, has set himself above the Constitution, and by his own fiat has prohibited conduct which Congress deliberately refused to declare illegal. . . . What's the Constitution between friends!—even though one of them happens to be the Attorney General of the United States and the other a Federal judge."

> came back to Chicago. I . . . was most fortunate in getting Wilkerson. He had long been in the service of the Government as district attorney. . . . He agreed with me on every point and granted the temporary injunction without a minute's delay.'
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> ". . . That is the history of the Wilkerson injunction. . . . Under our bill, instead of bringing these perjured affidavits . . ., he would have had to bring the witness to court, . . . before the temporary injunction could have been issued."

Mr. Beck concluded his earnest plea to save the Government's right to obtain injunctions by saying (p. 5500):

> "Now you gentlemen can reconcile with your consciences as you will—and your motives are just as high as I claim for myself—the passage of this law. I rejoice that I was able to be in the House today to protest against it. I would protest against it as *an impeachment of the sovereign powers of the United States Government in its own courts*, if I were the only man here to do it." (Italics supplied.)

As leader of the opposition, he offered an amendment the underlying theory of which was precisely the Government's theory in this case.[16] After debate, his amendment was rejected on a division by vote of 155 to 63 (p. 5505).

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[16] He suggested this language (p. 5503):

> "Provided, however, that neither this section nor any subsequent section of this bill shall apply to any labor dispute which involves the suspension or discontinuance of a public utility whose continuous operation is essential to the property, health, and lives of the people of any State or community. In such cases where the welfare, health or lives of a public are concerned who are not parties to such labor dispute, or where a labor dispute involves the obstruction of any instrumentality of interstate or foreign commerce, in such event the power of a United States court to grant injunctive relief in the interests of the public in accordance with the principles of equity jurisprudence shall not be denied or abridged, anything in this act to the contrary notwithstanding."

Congressman Blanton of Texas offered an amendment expressly to "except" from the bill cases "where the United States Government is the petitioner". This amendment, too, was voted down by a vote of 125 to 21 (p. 5503).

Ordinarily, Congress would, doubtless, have been extremely reluctant before turning down proposals designed to preserve governmental functions and the public welfare. But Congress was not functioning *in vacuo*. Senators and Members of the House of Representatives had before them and thoroughly discussed [17] the sordid history of several instances of extreme abuses in injunctions obtained at the behest of the Government.[18] It was because of that concrete experience that Congress so overwhelmingly voted

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[17] In addition to the references to the Congressional Record already made see 75 Cong. Rec. 4693, 5001, 5005, wherein several Senators referred to cases involving government injunctions, and p. 5490 where Congressman Celler inveighed against the "all embracing" *Wilkerson* injunction and the manner in which it "destroyed the bill of rights contained in our constitution".

The Senate Committee reporting the bill illustrated the "abuses of judicial power" in "the use of the injunction" which had been "growing by leaps and bounds" as follows: "For example, approximately 300 were issued in connection with the *railway shopmen's strike of* 1922 . . . (Frankfurter on 'The Labor Injunction' p. 52)". (Italics supplied.) S. Rep. No. 163, 72 Cong. Rec. 1st Sess. p. 8.

See also Frankfurter & Greene, *The Labor Injunction*, pp. 103, 115, 174, 218, 253, which are devoted in the main to a close examination and criticizing analysis of the *Wilkerson* injunction.

[18] Government injunctions, other than in the *Debs* and *Railway Shopmen's* cases, that were obtained prior to the enactment of the Norris-La Guardia Act are: *United States* v. *Workingmen's Amalgamated Council of New Orleans, et al.*, 54 Fed. 994, 57 Fed. 85; *United States* v. *Debs*, 64 Fed. 724, 158 U. S. 564; *United States* v. *Elliott*, 62 Fed. 801, 64 Fed. 27; *United States* v. *International Brotherhood of Electrical Workers, Local Unions Nos. 9 and 134, et al.* (U. S. D. C., N. D., Ill.) (unreported, petition filed February 24, 1913; final decree entered February 27, 1914); *United States* v. *Hayes* (U. S. D. C. Ind., November Term, 1919), in Equity No. 312; *United States* v. *Bricklayers, Masons & Plasterers International Union of America* (U. S. D. C., S. D. N. Y.), petition filed February 28, 1922. See 4 *Law and Labor* 95. *National Association of Window Glass Manufacturers et al.* v. *U. S.*, 263 U. S. 403.

down these otherwise superficially reasonable amendments. Congress was firmly determined to prevent the recurrence of what it considered to be outrages perpetrated by the judiciary precisely in cases initiated by the Government of the United States and to foreclose invocation by the Executive Department of the Government of the power sought to be invoked in this case.

As opposed to this decisive legislative history the Government merely offers the fragmentary statements of two Congressmen made in the course of debate in one of the branches of Congress (R. 57).. The rule is clear that legislative debates cannot be resorted to for the purpose of construing a statute[19] contrary to the natural import of its terms. *United States* v. *Shreveport Grain and Elevator Co.*, 287 U. S. 77; *Railroad Commission* v. *C. B. & Q. Railway*, 257 U. S. 563. Like other extrinsic aids to construction, their use is "to solve, but not to create, an ambiguity". *Hamilton* v. *Rathbone*, 175 U. S. 414, 421; *Caminetti* v. *United States*, 242 U. S. 470. When, as here, the language of an act is clear, it will be given effect in its natural and obvious sense. *United States* v. *Shreveport Grain and Elevator Co., supra; Rex* v. *Navigation Commissioners*, 5 Ad. & El. 804, 816; 111 English Reprint 1370; *United States* v. *Lexington Mill and Elevator Co.*, 232 U. S. 399. "Statutory language and

[19] In determining the legislative intent and purpose of an enactment, its language is first of all to be considered, in its natural and ordinary signification, and if there is no obscurity or ambiguity on the face of it, there is neither occasion nor justification for any process of construction, but the statute must be applied and enforced exactly as it stands. (Black on *Interpretation of Laws* (2nd Ed.), p. 142, and cases cited.) To say that the language of the Norris-La Guardia Act means to except suits brought by the United States is not to construe the statute but to add an additional and qualifying term to its provisions. This the courts are not at liberty to do under the guise of construction because where the words are plain there is no room for construction. (*Osaka Shoshen Kaisha Line* v. *United States*, 300 U. S. 98; *Crooks* v. *Harrelson*, 282 U. S. 55; *Hamilton* v. *Rathbone*, 175 U. S. 414.)

objective, thus appearing with reasonable clarity, are not to be overcome by resort to a mechanical rule of construction, whose function is not to create doubts, but to resolve them when the real issue or statutory purpose is otherwise obscured." *U. S.* v. *Rice, supra,* 775.

However, even assuming that some weight ought to be given to those isolated statements of Congressmen La Guardia and Michener upon which the Government relies, a close examination of the actual remarks made and the context in which they were made shows that they were speaking of possible disputes between the Government as sovereign employer and usual, sovereign employees of the Government. We shall show that no such relationship exists in the instant case; that, indeed, the Coal Administration has officially ruled that miners working in the bituminous coal mines are not to be regarded as Government employees.

However that may be, what is controlling, of course, is the clear language of the statute itself. Surely, had there been any intention to permit the Executive Department to seek and obtain injunctions in labor disputes it would have been an exceedingly simple matter for Congress to have noted that exception. "It is hard for us to believe that Congress meant us to read 'shall have jurisdiction' where it had carefully written 'but shall not have jurisdiction.' The command 'thou shalt not' is usually rendered as to forbid and we think here it was employed without subtlety or contortion and in its usual sense." *Connecticut Light and Power Co.* v. *Federal Power Commission,* 324 U. S. 515, 528-9.

Nothing can be more conclusive of the firm belief that the Congress had by the Norris-La Guardia Act precluded the Government from obtaining injunctions in labor disputes than the action taken by Congress three years later when it passed the National Labor Relations Act (29 U. S. C. 152).

Under that act the National Labor Relations Board—which is to say, the Government—is authorized to petition Circuit Courts for the enforcement of its orders "and for appropriate temporary relief or restraining order" (Sec. 10(e)). Congress was not even content to rely on the fact that the Norris-La Guardia Act, having been passed prior to the National Labor Relations Act, would not prevent the Government from proceeding by injunction to enforce its orders under the later statute. So clear was Congress' belief that the Norris-La Guardia Act barred Government injunctions in labor disputes that it went out of its way to provide for a special exception in cases brought by the Government against employers arising under the National Labor Relations Act:

> "Sec. 10 (h). When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes,' approved March 23, 1932 (U. S. C. Supp. VII. Title 29, secs. 101-115)."

C. The Legislative History of the War Labor Disputes Act Shows Conclusively That the Anti-Injunction Acts Apply to this Case.

The resort by the Government to the injunctive process in this case and its success in the court below constitute, we respectfully submit, one of the most patent and gross perversions of Congressional intent in the history of this country. We say that because the only conceivable status the Government has as a party to this case—and this will not be denied—derives from its seizure of the mines under the

War Labor Disputes Act (Act of June 25, 1943, C. 144, 57 Stat. 163), and the debates in both Houses of Congress during the consideration of that Act make it clear beyond the slightest doubt that *Congress recognized both that the Norris-La Guardia Act applies to Government-sought injunctions and that interferences with production in Government-seized plants were to be prevented and punished by criminal prosecutions alone.*

When Senate Bill 796 was introduced an amendment was offered whereby the Government could "restrain violations or threatened violations of this act" (89 Cong. Rec. 3809). Thereupon Senator Reed suggested a broader amendment which would permit private persons engaged in essential war production also to seek injunctive relief (p. 3810). On May 4, 1943, Senator Connally offered a substitute to his original bill. Section 5 of the substitute provided for injunctions at the behest of the Government (p. 3882).

Senator Barkley, speaking of the suggestion to allow Government injunctions, stated:

> ". . . if adopted, *it would wipe out the Norris-La Guardia Act or nullify it,* . . ." (P. 3900) (Italics supplied.)
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> "The measure *invokes the injunctive process by the Attorney General of the United States.* It provides that he may obtain an injunction. For years and years we have debated in the Senate and House of Representatives, and all over the country, whether labor disputes ought to be settled by the injunction process. *Congress has passed legislation against such procedure, and that legislation, known as the Norris-La Guardia Act, is now on the statute books.* Both major political parties have declared against regulation of labor by the injunction process over a period of a quarter of a century or more." (P. 3901) (Italics supplied.)

Senator Vandenberg stated (P. 3906):

> "I am very anxious that there shall be additional statutory protection to the uninterrupted production of war necessities, but I am wondering whether in order to achieve that purpose it is necessary for me to impinge upon a very profound hostility I have always had to the use of injunctions in labor disputes. I voted for the original Norris-La Guardia Act, and I have always felt that one of the most useful things we ever did, not only as a matter of fair play, but in respect to the status of the courts was substantially to separate from court jurisdiction the responsibility of, in effect, umpiring labor disputes.
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> "What I wish to ask the able Senator from Texas, if I may, is this: In his proposal, on page 4, it is provided that any person who willfully violates any provision of the act is to be guilty of a felony, and subject to a fine or imprisonment. *Is not that a conclusive penalty? Is it necessary in addition to go back into all the old injunctive process in connection with labor disputes?*" (Italics supplied.)

On May 5th, 1943, the Reed Amendment was rejected (p. 3986). On the same day it was proposed by Senator Danaher (p. 3988) that Section 5 of the Connally substitute, relating to Government injunctions, be stricken. He stated (p. 3988):

> "Mr. President, *Section 5 will undo Federal legislation with reference to the jurisdiction of the courts as to injunctions*, and I believe, sir, that we will be doing our cause no good, and that we shall incite great mistrust of the whole bill." (Italics supplied.)

Senator Connally urged that Senator Danaher's recommendation be rejected and stated (P. 3988):

> "The provision is limited to plants which the Government takes over. It would not change the Norris-La Guardia Act in any respect, *except in the one particular case . . .*" (Italics supplied.)

Senator Danaher answered (P. 3988):

> "Mr. President, I do not wish to argue the point, but certainly those of us who, as attorneys, have watched the progress of injunction cases in the courts down through the years cannot but be filled with dismay at the thought of giving a rule of law application in one set of circumstances and not in another. . . . But with reference to the use to be made of injunctions, with reference to contempt citations for violations of the injunctions, and with reference to accomplishments of what someone in the Department of Justice decides shall be done, the effect is the same . . . there is no place in this type of bill, proceeding from this particular philosophy, for the use of the injunctive remedy."

At this point of the debate Senator Vandenberg observed (P. 3988):

> "I think the Senator should point out that the elimination of Section 5 would not take the teeth out of the bill, however, *because the preceding punitive criminal section would still remain.*" (Italics supplied.)

Senator Langer inquired specifically (P. 3989):

> Mr. President, is it not true that unless section 5 is stricken from the bill that a portion of the Norris-La Guardia Act will be repealed?"

To which Senator Danaher replied:

> "It would certainly be overridden; let us put it in that way."

Senator Langer then propounded:

> "Would we then not have the same situation we had a few years ago when the Attorney General of the United States applied to Judge Wilkerson in Chicago, which led to the same situation which the Senator from Montana discussed a while ago?"

Upon a request for a division the provision allowing Government injunction was stricken (P. 3989).

When Senate Bill 796, as originally adopted by the Senate, was sent to the House for its concurrence, a discussion took place as to the use of injunctive relief. Mr. Thomason stated (89 Cong. Rec. 5300):

> "I oppose injunctions just as I did 'yellow dog' contracts."

Representative Celler expressed himself on the question of injunctions in connection with the War Labor Disputes Act as follows (P. 5325):

> ". . . I want to warn members of the committee that section 6 gives us back again the obnoxious labor injunctions which were banned after many years of striving and struggle, by the passage of the Clayton Act and the Norris-La Guardia Act. Remember we had consigned labor injunction to limbo. Now they are to be brought back to plague labor."

The House refused to agree to Senate Bill 796 as passed by the Senate but passed it with certain amendments thereto (See Cong. Rec. 5392).

Thereafter a conference committee of the two Houses agreed upon a bill which became the War Labor Disputes Act and which omitted any of the previous provisions relating to injunctions. In urging its adoption before the House of Representatives, Congressman Harness stated (P. 5732):

> "I ask labor to note, too, that there is in this measure none of the drastic features of previous proposals in the House to which it raised particular objection, such as prohibitions against picketing, jurisdictional strikes, sympathy strikes, the *suspension of the Norris-La Guardia Act*. . . ." (Italics supplied.)

There can be no doubt, in the face of that history, but that Congress, having fully considered the advisability of allowing injunctive relief in cases of interference with production in plants seized by the Government under the War Labor Disputes Act, decided to continue in full force and effect the language and philosophy of the Norris-La Guardia Act and to prevent Government injunctions in precisely the type of case here involved.

D. This and Other Courts Have Ruled That the Anti-Injunction Acts Applied To Restraining Orders and Injunctions Sought by the Government; and the Government Itself Has Conceded That They Do.

The Court below made no effort whatever to distinguish the instant case from controlling decisions holding that the anti-injuction acts do apply to cases where the Government seeks injunctive relief in labor disputes.

In *United States* v. *Hutcheson*, 312 U. S. 219, this Court said:

> "... Concededly an injunction either *at the suit of the Government* or of the employer could not issue." (P. 227) (Italics supplied.)

and,

> "... *neither the Government* nor Anheuser-Busch *could have sought an injunction* against the acts here challenged, ..." (P. 235) (Italics supplied.)

In *United States* v. *Weirton Steel Company*, 7 Fed. Supp. 255, the Court said:

> "It is contended that the act is not applicable to a suit wherein the United States is complainant. The act deals with labor disputes. It is immaterial who the complainant may be if a labor dispute is involved and the defendant is a party thereto."

In *United States* v. *American Federation of Musicians*, 318 U. S. 741 (affirming 47 Fed. Supp. 304 (N. D. Ill)), this Honorable Court directly applied the Norris-La Guardia Act to a suit for injunction instituted by the Government.

See also *Anderson* v. *Bigelow*, 130 F. (2d) 460, certiorari denied, 317 U. S. 690, wherein it was held that a bankruptcy receiver appointed by a Federal court was not entitled to injunctive relief which a private employer could not get in the Federal courts under the Norris-La Guardia Act.

The Government, itself, has affirmatively taken the position before this Honorable Court, as recently as April, 1946, that the anti-injunction acts prevented it from obtaining injunctions in cases involving labor disputes. Thus, in the brief of the United States on reargument of the case of *United Brotherhood of Carpenters and Joiners of America* v. *United States of America* (Nos. 6-10) it is stated (p. 6):

> "That suits by the Government are not exempt from the Act *is clear from its history.* Among the instances of the abuse of the injunctive process which Congress had in mind was *the injunction obtained by Attorney General Daugherty from Judge Wilkerson* in the shopmen's strike in 1922. And in *United States* v. *Hutcheson*, 312 U. S. 219, 227, the Court stated that 'Concededly an injunction either at the suit of the Government or of the employer could not issue.' (Italics supplied)."

This amazing *volte face* on the part of the Government, this repudiation of a position recently and formally taken before this Court, can only be described as an abject surrender to political expediency. It hardly savors of that degree of consistency which citizens of this country have every right to expect from highly placed public officers in the Department of Justice.

E. The Government Is Not Here Performing a Sovereign Function.

The court below concluded that in seizing and operating the mines the United States "was at all times exercising its sovereign functions derived from the Constitution and laws of the United States" (R. 98, 99).

Before discussing the validity of that conclusion it is well to inquire into its relevance. Possibly it represents an attempt to distinguish the instant case from the *Hutcheson, American Federation of Musicians* and *Weirton* cases, *supra*. But such a distinction necessarily implies the impossible suggestion that in those cases the Government was not acting *qua* government but, rather, was expending governmental funds solely for the benefit of private employers who were in dispute with their employees in those cases.

Perhaps, however, the Government is arguing that the point of distinction lies in the fact that in the instant case the Government is, in effect, the employer, and hence, to quote the Government, "here there is not and cannot be a bona fide labor dispute . . . for the sovereign, in the exercise of its functions, can at no time be held to be engaged in a labor dispute with private persons" (R. 57).

Probably, by that vague statement the Government is trying to argue that this case is factually distinguishable because here the Government has seized the mines under the War Labor Disputes Act. But—as we now proceed to show—the nature of the governmental function here involved is not such as to have any possible relevance to the issue of the applicability of the anti-injunction acts.

In a literal sense, everything any branch or official of the Government does may, of course, be described as a sovereign function. But where the concept of sovereignty has true legal relevance this Court has been most careful to limit and concretize its meaning. See, for example,

New York v. *United States*, 90 L. Ed. 265 (Adv. Sheets); *South Carolina* v. *United States*, 199 U. S. 437; *Ohio* v. *Helvering*, 292 U. S. 360. Assuming that sovereignty is a relevant issue in this case—which we deny because of the history and language of both the Norris-La Guardia and War Labor Dispute Acts—still to have any significant meaning the Government's function in administering the bituminous coal mines must be "sovereign" in the same sense as, say, the function of the Government in raising armies. It is only as to such traditional and vital governmental functions that it may be said, with any degree of reason or cogency, that labor disputes or similar interferences will not be permitted.

As to that, we say that the conclusion of the court below that the Government is here performing a "sovereign function" confounds common knowledge and completely ignores the record in this case. We categorically state—and this is fully supported by the record—that, far from being "sovereign" in any significant sense, the Government's role in administering the bituminous coal mines is for the most part fictional and for the remainder nominal only.

Is it conceivable that a sovereign power will publicly articulate its urgent desire to return a vital "sovereign" function back to private persons? Is it conceivable that a sovereign power will turn over the profits resulting from their own "sovereign" functions to private persons? Is it conceivable that a sovereign power will impose a tax on the income derived from the performance of a "sovereign" function or that it will permit other sovereignties to tax such income?

The mere posing of these questions utterly dissipates whatever value there may be in the conclusion of the court below and sharply shows its untenability. All these fac-

tors, completely alien to the concept of sovereignty in the limited and only appropriate sense that it must be used here, are indisputable factors in this case.

Government's Exhibit 13 (R. 399-403), the so-called "Krug-Lewis agreement", incorporating as it does agreements previously made with the private owners of the coal mines, affirmatively maintains a union-shop condition in the bituminous coal mines, something unusual as respects ordinary, "sovereign" employees. In addition, the Krug-Lewis agreement, like Executive Order No. 9728 (R. 335), shows on its face that the Government's participation was necessarily temporary, whereas sovereign functions survive as long as the sovereign power itself does.

Government's Exhibit 20 (Capt. Collisson's letter to Lewis of October 22, 1946, R. 410) states in part as follows:

> ". . . . Such an agreement would accomplish the result which has been publicly expressed as the desire of the Coal Mines Administration, the United Mine Workers, and the operators, *namely, the return of the mines to private operation.*" (Italics supplied.)

Similarly, Exhibit "J" of the Government's complaint (letter from Secretary of the Interior Krug to Lewis of November 14, 1946, R. 30) states in part as follows:

> ". . . .certain of your proposals are of such a fundamental nature that they should be directed *to the owners and private operators* of the bituminous coal mines rather than to the Government, which *is only the interim custodian* of these properties.
>
> • • • • • • •
>
> ". . . I am convinced that any substantial change in wage rates and hours of employment made by the Government at this time would postpone for an indefinite period the return of the mines to their owners, . . .
>
> • • • • • • •

"'. . . It would . . . be inimical to the best interest . . . of the country, *should the Government prolong indefinitely its temporary role as a substitute for one of the parties* in the collective bargaining which must be the foundation of a healthy coal industry.'' (Italics supplied).

The foregoing irrefutably establishes the temporary nature of the Government's role and its urgent desire to return this so-called "sovereign function" back to private persons and groups.

Pursuant to regularized and established procedures in all cases where, under the War Labor Disputes Act, the Government had taken over the administration of certain industries, the Government in the instant case issued formal "regulations for the operation of coal mines under Government control" which are published in the Federal Register [20] and which were the subject of cross-examination of Government's witness, Captain Collisson (R. 231-234).

Section 5 of the aforementioned regulations provides:

"*All properties in the possession of the Government shall be operated in a manner consistent with the fact that title to the properties remains in the owners thereof* . . ." (Italics supplied.) (R. 231.)

Section 40 of the regulations provides in part as follows:

"None of the provisions of this Section 40, and no action that shall be taken pursuant to any of them, shall be deemed to constitute acquiescence by the Administrator in any claim that operations during the period of Government possession and control were for the *financial account of the Government.*" (Italics supplied.) (R. 232.)

[20] 8 Fed. Reg. 6655, 10712, 11344, 17339.

By these regulations the mine operators have been authorized to retain whatever profits may accumulate during the time the Government administered the mines.[21]

Section 23 (d), standing by itself, we respectfully submit, is entirely conclusive of the issue of sovereignty in this case. It provides:

> ". . . *nothing in these regulations shall be construed as recognizing such personnel as officers and employees of the Federal Government within the meaning of the statutes relating to Federal employment.*" (Italics supplied.) (R. 233.)[22]

The workers in the bituminous mines not being sovereign employees, the case of the Government necessarily collapses.

Section 24 of the regulations provides in part as follows:

> ". . . *The companies are expected to meet all Federal, State and local taxes, contributions, and assessments, in the customary manner.*" (Italics supplied.) (R. 234.)

We need hardly remind the Court that income of the Federal Government derived from a "sovereign function" may

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[21] *See Warner Coal Corporation* v. *Costanzo Transportation Co.*, 144 Fed. (2d) 589 (C. C. A. 4, 1944), Certiorari denied, 323 U. S. 791, where it was held that the seizure of the mines by the Government did not prevent the coal company from being adjudged a bankrupt.

[22] In *Stanton* v. *Ruthbell Coal Co.*, 34 S. E. (2d) 257 (W. Va. 1945) involving an action to recover damages for death while decedent was employed in a coal mine seized by the Government, the court rejected the contention that the United States Government was decedent's employer. Quoting from the decision of this Court in *Missouri Pacific R. Co.* v. *Ault*, 256 U. S. 554, 557, the court pointed to a major distinction between Government seizure under the Smith-Connally Act and Government control of the railroads under the Federal Control Act of 1918:

> ". . . Managing officials were 'required to sever their relations with the particular companies and to become exclusive representatives of the United States Railroad Administration.' . . . The railway employees were under its direction, and were in no way controlled by their former employers."

not be subjected to tax by a State or municipality. *M'Culloch* v. *Maryland*, 4 Wheat. (U. S.) 316.

Section 24 also provides in part:

> *"The mining companies are deemed to remain subject to suit as heretofore."* (Italics supplied.) (R. 234.)

Here again, it is basic to the concept of sovereignty that a sovereign cannot be sued except with its own consent. See, for example, the Eleventh Amendment to the Constitution of the United States.

F. This Case Involves and Grows Out of a "Labor Dispute" Within the Meaning of the Norris-La Guardia Act.

That this case involves a "controversy concerning terms or conditions of employment" (Sec. 13(c)) cannot be denied. In his letter of October 21st (R. 408-409) Mr. Lewis stated to Secretary Krug that the Government had misinterpreted the agreement respecting "pro-rata vacation payments" and the manner in which "railroad weights rather than tipple weights" were being used "to compute the payments due the welfare and retirement fund." In addition, he requested a conference "for the purpose of negotiating new arrangements affecting wages, hours, rules . . . and all other pertinent matters . . ." all of which are clearly within the meaning of the statutory phrase "terms or conditions of employment."

Secretary Krug, in his letter of November 14th, 1946 (R. 30), among other things stated the following: "I am obliged to inform you that certain of your *proposals* are of such a fundamental nature that they should be directed to the owners and private operators of the bituminous coal mines . . ." (Italics supplied). That those "proposals" referred to wages and working conditions is made abundantly

clear in subsequent portions of the letter. Thus, Secretary Krug goes on to say:

> ". . . I am convinced that any substantial change in *wage rates and hours of employment* made by the government . . . would postpone . . . the return of the mines to their owners, and would thwart the . . . wishes of all persons concerned for genuine *collective bargaining* between management and labor in the bituminous coal industry.
>
> "I express no views whatever upon the intrinsic merits of any of your *proposals* . . .
>
> "I have frequently urged that you meet with representatives of the coal operators in order to *negotiate, through the normal processes of collective bargaining, a new contract* for the coal industry . . . During the first of these months the situation would be held in status quo, without retroactive *wage changes* . . . if no *agreement* should be reached during this first month, . . . any changes thereafter agreed upon as to *wages and hours* would be made retroactive to December 16th, 1946." (Italics supplied.)

Thus, the immediate cause of the notice to terminate the Krug-Lewis agreement was the failure on the part of the Coal Administrator to accede to the Union's request to negotiate changes in the terms and conditions of employment. There cannot, we repeat, be any question but that the definition of "labor dispute" as set forth in Section 13-C of the act was fully met by the undisputed facts in this case.[23]

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[23] See, also, recross-examination of Captain Collisson (R. 270, 271) wherein he admitted the existence of an unresolved dispute over the manner of weighing coal in computing payments due the Health and Welfare Fund; and cross-examination of Krug (R. 305) showing that on November 11, 1946, he met with the *"Mine Workers Negotiating Committee"* and discussed "questions involving hours, wages, working conditions and . . . the Health and Welfare Fund."

But we may go even beyond that. The Norris-La Guardia Act does not apply only to cases involving actual labor disputes but also to cases which *"grow out"* of a labor dispute. See *Lee Way Motor Freight* v. *Keystone Freight Lines*, 126 F. (2d) 931. Any possible argument that the instant case does not grow out of a labor dispute must necessarily be whimsical in the extreme for the very presence of the Executive Department of the Government in this cause is necessarily premised on its alleged authority under a statute officially designated as the "War *Labor Disputes* Act".[24] (Act of June 25, 1943, 57 Stat. 163, 50 U. S. C. App. Secs. 1501 et seq.) Had there been no "labor dispute" there would not have been and could not have been any Krug-Lewis agreement and no notice to terminate that agreement.

Moreover, the labor dispute between the private mine operators and the Union which was the occasion for the Government seizure of the mines on May 21st, 1946, *has never been resolved* (R. 238, 239, 240). The statements made by Secretary Krug in his letter of November 14th (R. 30, 31) were premised on the clear recognition of the fact that the labor dispute over wages, hours and working conditions which existed between the private mine owners and the Union as of the date of Governmental seizure on May 21st was outstanding up to and beyond the date of the issuance of the temporary restraining order.

It is clear, then, that the definition of the phrase "a case shall be held to involve or grow out of a labor dispute," as set forth in Section 13 (a)[25] of the Norris-La Guardia Act, has been fully met by the facts of this case.

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[24] Sec. 2(d) of the act provides that the term "'labor dispute' shall have the same meaning as in Section 2 of the National Labor Relations Act." Section 2 of the National Labor Relations Act defines "labor dispute" in virtually the same manner as it is defined in Sec. 13(e) of the Norris-La Guardia Act.

[25] Section 13 (a) provides:

"A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry,

We have shown that this case "involves persons who are engaged in the same industry" namely, the private mine operators and the Union. In so showing we have necessarily shown the alternative requisite of involving persons who have "indirect interests" in that industry.

Section 13 (b) defines the phrase "persons participating or interested in a labor dispute," as employed in Section 13 (a).[26]

Clearly, all defendants in this cause come within that definition. "Relief is sought against" them, and they are all "engaged in" or have a "direct or indirect interest" "in the same industry, • • • in which such dispute occurs."

Upon the undisputed facts in the record and the unequivocal language of the Act, this case does involve a labor dispute and does grow out of a labor dispute, and the Norris-La Guardia Act applies. *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U. S. 552; *United States* v. *American Federation of Musicians*, 318 U. S. 741; *Milk Wagon Drivers Union* v. *Lake Valley Farm Products, Inc.*, 311 U. S. 91; *Lauf* v. *Shinner*, 303 U. S. 323; *Green* v. *Oberg-*

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trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined)."

[26] "A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft or occupation."

fell, 121 F. (2d) 46; *United States* v. *Weirton Steel Co.*, 7 Fed. Supp. 255.

The Government having erroneously proceeded on the theory that the Norris-La Guardia Act did not apply, there has been a complete failure to comply with its provisions. To give but a few examples: The *ex parte* order was for a period of ten days whereas under the act such an order "becomes void at the expiration of . . . five days" (Sec. 7 (e)); defendants were prohibited from giving publicity to the existence of and the facts involved in the labor dispute (Sec. 4 (e)), and from advising, urging or otherwise inducing a cessation of work (Sec. 4 (i)). Also there was no "testimony under oath" (Sec. 7) and no "findings of fact" made (Sec. 2) prior to the issuance of the temporary restraining order, and there was no finding and no basis for finding that "complainant has no adequate remedy at law" (Sec. 7).

Possibly the government will argue that the Norris-La Guardia Act does not apply to the instant case because defendants had engaged in unlawful conduct, namely—violation of the War Labor Disputes Act and breach of contract. Even if it were true that such crime and breach of contract had been perpetrated, which we deny, there is no merit to that possible argument. We have already shown the plain intent of Congress to limit the Government to criminal prosecution for violations of the War Labor Disputes Act. Moreover, the decisions holding that criminal, or otherwise unlawful acts on the part of defendants, do not bar the application of the Norris-La Guardia Act, are both numerous and explicit.

In *Milk Wagon Drivers Union* v. *Lake Valley Farm Products, Inc.*, 311 U. S. 91, it was expressly held that "the jurisdictional prerequisites of the Norris-La Guardia Act"

must "be complied with before injunctive processes can be used against the labor union accused of violating the Sherman Anti-Trust Act."

In *Brotherhood of Railway Trainmen* v. *Toledo, Peoria and Western Railroad*, 321 U. S. 50, it was held that violence or threats of violence could not be enjoined without full compliance with the procedural requirements of the Norris-La Guardia Act. See also *Wilson* v. *Birl*, 105 F. (2d) 948; *Lee Way Motor Freight, Inc., et al.*, v. *Keystone Freight Lines, Inc.*, 126 F. (2d) 931; *Southeast Motor Lines, Inc.* v. *Hoover Motor Freight Lines, Inc.*, 34 F. Supp. 390.

The Norris-La Guardia Act "is the culmination of a bitter political, social and economic controversy extending over half a century." (*Milk Wagon Drivers Union* v. *Lake Valley Farm Products, supra.*) That controversy, epitomized by the slogan "government by injunction," was initiated by the injunction obtained by the Attorney General of the United States in the Pullman strike of 1894.[27] The public reaction to that injunction was intense and immediate.[28] The "storms of protest," in which many "thoughtful lawyers joined," were primarily addressed to the perversion of an equitable remedy in a manner that "endangered the personal liberty of wage earners."[29]

The clamor for reform quickly assumed significant political proportions. In 1896, two years after the *Debs* injunction was obtained and one year after the Supreme

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[27] In Re *Debs, supra.*

[28] Lindsey, *The Pullman Strike*, (University of Chicago Press, 1912); 2 Warren, *The Supreme Court of the United States History* (1926), 702-5; Patterson, *Judicial Usurpation of Power* (1905), 10 Va. L. Reg. 855.

[29] Mr. Justice Brandeis in *Truax* v. *Corrigan*, 257 U. S. 312, 366.

Court affirmed it, the Democratic Party denounced labor injunctions as a "highly dangerous form of oppression."[30] Beginning with 1908 the Republican Party, too, advocated the elimination of the abuses inherent in labor injunctions.[31]

Presidents Theodore Roosevelt and Taft, in formal, official statements, strongly criticized the labor injunction and urged reforms upon Congress.[32] A veritable flood of legislative proposals was introduced and discussed in Congress. "These legislative proposals occupied the attention of Congress during every session but one in the twenty years between 1894 and 1914."[33]

At long last, in 1914, Congress enacted the Clayton Act which was described by President Wilson as "a veritable emancipation" of the workingmen of America,[34] and was hailed by Samuel Gompers as "the industrial magna charta upon which the working people will rear their construction of industrial freedom."[35] But the hopes thus engendered proved wholly illusory. They were completely frustrated by "the interpretation placed by the courts" on the Clayton Act.[36]

Inevitably, the failure of the Clayton Act to accomplish its plain purposes renewed, with even greater force, the agitation against equity intervention in labor disputes. Beginning with the 66th Congress, numerous bills seeking to offset the crippling effects of the decisions of the Supreme Court were introduced.[37] These eventuated in

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[30] Proceedings of the Democratic National Convention (1896) 194.

[31] Proceedings of the 14th Republican National Convention (1908) 168.

[32] 15 Messages and Papers of the Presidents, 6983, 7026-8, 7086; 16 *ibid.* 7910, 7213, 7432, 7378.

[33] Mr. Justice Brandeis, *Truax* v. *Corrigan, supra*, p. 369.

[34] Messages and Papers of Woodrow Wilson (1924) 302-7.

[35] 21 American Federationist (1914) 971.

[36] Senate Report No. 163, 72nd Cong., 1st Sess., p. 8. See also Frankfurter and Greene, *The Labor Injunction*, 165-176.

[37] Frankfurter and Greene, *The Labor Injunction*, *supra*, p. 176, n. 169.

the Norris-La Guardia Act of 1932. Seldom, if ever, has any legislation been the subject of such extensive hearings, study and debate.[38] The result has been a statute virtually without parallel in the skill with which it was drafted, in the clarity of the policy which it embodies and in the manner in which it has fulfilled its objectives.

It is fourteen years since the Norris-La Guardia Act was enacted. To some, with memories that are all too short, "government by injunction" has become merely an historical phrase, with academic significance only. They are woefully wrong. It would, we earnestly submit, be a grievous mistake to restore the injunction as a "weapon in American industrial conflicts. It does not work. It neither mines coal, nor moves trains, nor makes clothing. As an adjustor of industrial conflict the injunction has been an utter failure. It has been used as a short cut—but it has not cut anything, except to cut off labor from confidence in the rule of law and of the courts as its impartial organs. No disinterested student of American industry, or of American law, can have the slightest doubt that, beginning with the *Debs* case, the use of labor injunctions has, predominantly been a cumulative influence for discord in our national life."[39]

II

The Restraining Orders Were Void Because They Contravened the Constitution of the United States.

A. The Restraints Imposed.

Although the court below observed that "all the restraining order was, as a practical matter, was an order on Mr. Lewis . . . to order these men not to cease work

[38] Frankfurter and Greene, *Congressional Power Over the Labor Injunction* (1931), 31 Columbia Law Rev. 385-388.
[39] Frankfurter, *Law and Politics, supra*, p. 220.

until the merits of the controversy could be determined,"[40] actually, the order by its terms imposed *six separate* restraints on "the defendants and each of them and their agents, servants, employees, and attorneys, *and all persons* in active concert or participation with them." (Emphasis supplied.)

All those persons were restrained

(1) "from permitting to continue in effect the notice heretofore given by the defendant, John L. Lewis, to the Secretary of Interior dated November 15, 1946."

(2) "from issuing or otherwise giving publicity to any notice that was to the effect that the Krug-Lewis agreement has been, is, or will at some future date be terminated, or that said agreement is or shall at some future date be nugatory or void at any time during the Government's possession of the bituminous coal mines."

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[40] (R. 172-173). The full statement of the court was:

"All the restraining order was, as a practical matter, was an order on Mr. Lewis, which is not by indirection, to order these men not to cease work until the merits of the controversy could be determined, and of course the court respects counsel and respects what you have to say; but, essentially, that is all the court's order meant; and we think Mr. Lewis knew it; that is I think he knew it—I suppose he knew it."

Similarly, on page 178 of the Record appears the following coloquy between the court and counsel for defendants below:

"The Court: . . . and the Court's order was that the notice should be rescinded, or what amounted to the notice should be rescinded, so that the matter could remain in status quo until there should be a judicial determination as to whether or not the contract existed. Now, that is all there is in the case insofar as the restraining order is concerned.

"Mr. Padway: Well, if that is all there is in the case I can assume for the moment that what the miners did with respect to quitting work was lawful and proper.

"The Court: Well, *the miners are not in this case*, sir. (Emphasis supplied.)

"Mr. Padway: They are by the injunctive decree.

"The Court: The Court does not agree with you."

(3) "from breaching any of their obligations under said Krug-Lewis agreement;"

(4) "from coercing, instigating, inducing or encouraging the mine workers at the bituminous coal mines in the Government's possession, or any of them, or any person, to interfere by strike, slow down, walkout, cessation of work, or otherwise, with the operation of said mines by continuing in effect the aforesaid notice or by issuing any notice of termination of agreement or through *any other means or device.*" (Emphasis supplied.)

(5) "from interfering with or obstructing the exercise by the Secretary of the Interior of his functions under Executive Order 9728."

(6) "and from taking any action which would interfere with this court's jurisdiction or which would impair, obstruct or render fruitless the determination of this case by the court."

It will at once be seen that the order itself is far more extensive in coverage both as to persons affected and restraints imposed than the court repeatedly indicated. For the purpose of the argument to which we now address ourselves, namely, the unconstitutionality of the restraints imposed, it is sufficient to limit our discussion to restraints Nos. 2 and 4. As to those, we urge that they are repugnant to the First and Thirteenth Amendments to the Constitution of the United States.

B. The First Amendment.

There can be little doubt but that the second restraint prohibiting various persons described in the order from "*giving publicity* to any notice" respecting the termination of the Krug-Lewis agreement during Government occupancy of the coal mines effectively deprives those persons of freedom of speech and freedom of press.

It must be constantly borne in mind that there has as yet been no declaration or judgment by any competent tribunal

respecting the duration of the Krug-Lewis agreement. Accordingly, it is a fact that when and if some competent court does construe the agreement it may well determine that the interpretation placed on the duration clause by defendant John L. Lewis was entirely correct. In the face of that fact, the prohibition against giving any publicity—carrying with it as it does the coercive threat of punishment—constitutes a prior restraint against public discussion of a matter of profound public interest in the most obvious manner conceivable.[41]

For example, if the United Mine Workers of America should have desired to publish in their official journal a complete statement as to the reasons why counsel for the organization had advised that the Krug-Lewis agreement was terminable as of November 20th, together with a statement as to why Mr. Lewis relied upon counsel's opinion it would have been prevented under threat of criminal punishment from doing so. Again, Mr. Lewis or any other official of the Union or any other person designated by or cooperating with the Union was, by this restraint, effectively prevented from broadcasting over the radio his views and reasons respecting the termination of the Krug-Lewis agreement. Whatever the medium, effective publicity and discussion were completely prohibited.[42]

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[41] ". . . Some injunctions have prohibited the strikers from giving any publicity to the existence of the strike or their reasons for it or their justification of it. Such prohibitions are, of course, outrageous violations of the right of 'free speech'." 75 Cong. Rec. 5463. See also concurring opinion of Mr. Justice Stone in the *Hutcheson* case, *supra*, (p. 237): "The publication, unaccompanied by violence, of a notice that an employer is unfair to organized labor . . . is an exercise of free speech guaranteed by the First Amendment which cannot be made unlawful by an act of Congress."

[42] Compare *Carpenters and Joiners Union* v. *Ritters' Cafe*, 315 U. S. 722, 728, where the Court said:

"Restriction of picketing to the area of the industry within which a labor dispute arises *leaves open to the disputants other traditional modes of communication.*" (Emphasis supplied.)

If the procedures under the Declaratory Judgment Act can thus be used, if, that is, the jurisdiction of a court can be invoked to decide a disputed point of law and pending such decision one party to the dispute whose legal contentions have not as yet been rejected can be foreclosed from exercising basic constitutional rights in order to preserve and secure his interests and rights, then Congress has, by enacting the Declaratory Judgment Act, contrived a device which effectively nullifies constitutional protections.

What has been said respecting restraint No. 2 is equally applicable to restraint No. 4. Indeed, restraint No. 4 goes even further in that it is not limited to speech or publicity respecting the notice of termination of any agreement but prohibits "the inducing" or the "encouraging" of "mine workers" or "any person" by "*any other means or device*" to interfere with the operation of Government-possessed mines. Thus, no member of the United Mine Workers of America or no person acting in concert with that organization would, under this restraint, be permitted to address a union meeting and persuade the members by speech or otherwise peacefully to cease work, no matter what the occasion for his approach to those members might be. If, for example, the private owners, who still remain in effective managerial control of the mines during so-called Government possession, should engage in an arbitrary and provocative course of action and if repeated but futile attempts at remedy were made by the Union, nevertheless, under this restraint, no official or member of the Union and no person acting in concert with them could persuade the mine workers peacefully to quit in protest against that offensive course of action.

"The First Amendment assures the broadest tolerable exercise of free speech, free press, and free assembly, not merely for religious purposes, but for political, economic,

scientific, news or informational ends as well." (Mr. Justice Jackson in *Douglas* v. *Jeannette*, 319 U. S. 157, 179.)

The range of activities proscribed by the temporary restraining order of November 18th "whether characterized as picketing or loitering or otherwise, embraces nearly every practical, effective means whereby those interested—including the employees directly affected—may enlighten the public on the nature and causes of a labor dispute." (Mr. Justice Murphy in *Thornhill* v. *Alabama*, 310 U. S. 88, 104.)

"In sum, whatever the means used to publicize the facts of a labor dispute, whether by printed sign, by pamphlet, by word of mouth or otherwise, all such activity without exception is within the inclusive prohibition of" that restraining order (*Ibid.* 101).

In *Carlson* v. *California*, 310 U. S. 106, this Court held "For the reasons set forth in our opinion in *Thornhill* v. *Alabama, supra*, publicizing the facts of a labor dispute in a peaceful way through appropriate means, whether by pamphlet, by word of mouth or by banner, must now be regarded as within that liberty of communication which is secured to every person by the Fourteenth Amendment against abridgement by a state." The same principle applies, of Course, to court decrees. *American Federation of Labor* v. *Swing*, 312, U. S. 321.

See also, *Journeymen Tailors* v. *Millers, Inc.*, 61 S. C. 732; *Cafeteria Employees Union* v. *Angelos*, 320 U. S. 293; *Hague* v. *C. I .O.*, 307 U. S. 496; *Patterson* v. *Colorado*, 205 U. S. 454; *Schneider* v. *State*, 308 U. S. 147, 161; *People* v. *Harris*, 104 Colo. 386; *State* v. *Butterworth*, 104 N. J. L. 549, 142 Atl. 57.

The court below brushed aside the extensive arguments presented to it respecting freedom of speech with the simple assertion that "The Court does not think that the con-

tention that freedom of speech has been violated is a matter for serious consideration" (R. 204).

In the course of orally presenting the constitutional arguments the court below intimated that it would not have punished any of the individual miners or other persons for any alleged contempt of the order other than John L. Lewis and, in its opinion, declared that all matters in the restraining order other than the direction to rescind the notice of termination were "simply ancillary" (R. 204).

But the court's *post scriptum* commentary and characterization do not, of course, alter the plain significance and impact of the restraining order. No person covered by that order could be expected to divine what the court said it had in mind. If the order meant what it said—and that, of course, is the only conceivable legal test—then, even had Mr. Lewis cancelled the notice of termination, no member of the Union could thereafter, under the order, encourage a strike during Government occupation for objectives entirely unrelated to the termination of the Krug-Lewis agreement.

Nor does the court's indication that it would not have held any of the miners in contempt for doing any of the things the restraining order explicitly prohibited them from doing save the constitutionality of the Court's restraining orders.

> ". . . The power of the licensor against which John Milton directed his assault by his 'Appeal for the Liberty of Unlicensed Printing' is pernicious not merely by reason of the censure of particular comments but by reason of the threat to censure comments on matters of public concern. It is not merely the sporadic abuse of power by the censor but the *pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion.*" *Thornhill's* case, *supra*, 97. (Emphasis supplied.)

See, also, *Near* v. *Minnesota*, 283 U. S. 697, 713.

C. The Thirteenth Amendment.

In paragraph 29 of its complaint the Government alleged that the "notice given by the defendant Lewis, purporting to terminate the Krug-Lewis agreement, constitutes in substance and effect a call for a strike of the bituminous coal mine workers" (R. 6, 7), and, in paragraph 31 (R. 7) it was alleged that "The threatened concerted work stoppage . . . would constitute an irreparable injury to the interests of the people of the United States of America." The court below so found (R. 93, 97).

Despite these allegations and findings the court below repeatedly asserted that the right to quit work was not affected by its restraining order.[43] Here again, where there is a patent contradiction between the plain meaning of the

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[43] On page 169 of the Record appears the following colloquy:

"Mr. Padway: Then again we have here this situation—I think it was fundamental in our jurisprudence . . . that men have the right to work or not to work as they see fit.

"The Court: Well, do you think it is necessary to argue that, Mr. Padway?"

On page 173 of the record appears the following:

"Mr. Padway: Now, if the Court please, and really—and whatever I do say, whatever I say is—and I cannot help putting it bluntly—Your Honor's order tells these men that they cannot strike—period. And, tells them that if they go on strike, in the light of that order, that they will subject themselves to punishment.

"The Court: The Court didn't so understand the order."

On pages 177 and 178 of the record appears the following:

"The Court (interposing): There was no order, either directly or indirectly, and nobody could construe anything the Court has said as an order to the individual miner that he could not work or could work.

"Mr. Padway: Let us go a little further, to the group of miners, that they could work or not work——

"The Court (interposing): There wasn't any order to them that they could not quit —."

language of the formal restraining order issued by the court and the meaning that the court said it had in mind, the former and not the latter is controlling.

To assert that the right to quit work was not involved in this case is not only to engage in inane verbalisms but is, also, completely to confound the only conceivable justification for seeking and obtaining equity relief. It is beyond imagination that these proceedings would ever have been instituted unless a cessation of work in the bituminous coal mines was threatened or took place, and the only possible purpose of the restraining order issued by the court below was to avoid that cessation of work. Put otherwise, the temporary restraining order of November the 18th sought, under threat of severe punishment, to compel persons to work against their will. And that, we submit, is "involuntary servitude" within the meaning of the Thirteenth Amendment to the Constitution of the United States, whose "plain intention was . . . to render impossible any state of bondage; to make labor free, by prohibiting that control by which the personal service of one man is disposed of or coerced for another's benefit, which is the essence of involuntary servitude". (Mr. Justice Hughes in *Bailey* v. *Alabama*, 219 U. S. 241.)

Even if we assume, arguendo, that a refusal to work is for a purpose declared to be unlawful, it is beyond the power of any court in this country to compel any person or group of persons against his or their will to work for the private profit of another person or group of persons. Let us make the most extreme assumption possible—one wholly unjustified by the facts—namely, that by the Krug-Lewis agreement all the coal miners individually obligated themselves to remain at work during Government occupation of the mines and that they had breached that agreement. Even then, no court of equity—regardless of the existence or applicability of anti injunction acts—would have the

right to compel them to remain at work. In unusual situations involving exclusive agreements for unique personal services equity courts can restrain persons from performing those services for others. That is the outermost limit of their powers. They cannot compel them specifically to perform the work they contracted to do. That inherent limitation on equity courts is fortified and is placed beyond the reach of Congress by the express inhibitions of the Thirteenth Amendment.

> "We are not advised of any rule of law under which any man in this country will be forced to serve with his labor any other man whom he does not wish to serve." *Henderson* v. *Coleman*, 7 So. (2d) 117 (Fla.).

See, also, *Stapleton* v. *Mitchell*, 60 Fed. Supp. 51; *U. S.* v. *Petrillo* (decided November 25, 1946, U. S. D. C. N. D. Ill. E. D.); *Carpenters Union* v. *Citizens Committee*, 333 Ill. 225, 164 N. E. 393; *Alabama State Federation of Labor* v. *McAdory*, 246 Ala. 1.

Doubtless counsel for the Government will say, as did the court below, that the restraining order merely directed the defendant John L. Lewis to rescind his notice of termination and that it was not addressed to the right of the miners themselves to quit work. As already shown, such a contention overlooks the hard and crucial fact that, standing alone, Mr. Lewis' notice means nothing; it could cause no damage, irreparable or otherwise, and affect no interests, private or public. The miners' cessation of work —and that alone—had economic and legal significance. Accordingly the restraining order was necessarily and exclusiveiy addressed to that cessation of work.

In any case, the restraining order on its face directly prohibits the miners, individually and collectively, from engaging in a peaceful cessation of work. "All persons participating with the defendants are restrained from

"instigating, inducing, or encouraging the mine workers . . . to interfere by . . . cessation of work . . . with the operation of mines by . . . and . . . means or device." The illustrations given in our discussion of the First Amendment apply equally here. Thus, any miner or group of miners who quit their work in protest against some condition in the mines that they find intolerable will, by such quitting, be instigating or inducing or encouraging other mine workers to cease work and thereby violate the restraining order.

When argument was addressed to the court below showing the "omnibus" nature of the restraining order the court replied that the restraints imposed were the same things as were "prohibited in the Smith-Connally Act." (R. 125). Possibly the court's observation was intended to justify the inordinate scope of its restraining order by reliance on the fact that Congress had employed similar language,[44] but that would overlook the obvious fact that Congress is subject to the same constitutional limitations as are the courts. Moreover, Congress was careful to note an exception in these words:

> "No individual shall be deemed to have violated the provisions of this section by reason only of his having ceased to work or having refused to continue to work or to accept employment,"

an exception conspicuously absent from the restraining order. Under the restraining order even a single individual's cessation of work that was successfully calculated to induce or encourage others to quit work would be subject to contempt proceedings.

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[44] While the language of the restraining order is in many respects similar to the language contained in Section 6 of the War Labor Disputes Act, a comparison of the two will show how much more extensive and all inclusive is the temporary restraining order involved in this case.

If, as we have shown, the restraints imposed by the court deprive persons of rights under the First Amendment or under the Thirteenth Amendment or both, then the restraining orders were entirely without vitality and could be disregarded with complete impunity under the authorities that we now discuss.

III

The Restraining Orders Being Void by Reason of Conflict With the Norris-La Guardia Act and Conflict With the Constitution, They Could be Disregarded With Impunity or, if They Could Not Be Disregarded a Trial by Jury Was Mandatory.

A. Void Orders Are Nullities.

We invoke and rely upon the familiar principle that a restraining order issued by a court having no jurisdiction under the applicable statutes or the Constitution is void *ab initio* and, therefore, "no contempt proceeding" can "be maintained for any disobedience of its provisions." *Gompers* v. *Buck Stove & Range Company*, 221 U. S. 418, 436. The exercise of jurisdiction to punish for Contempt of a void order compounds the usurpation of jurisdiction.

In the case of *Ex Parte Rowland*, 104 U. S. 604, this Court said:

> "... But if the command was in whole or in part beyond the power of the court, the writ, or so much as was in excess of jurisdiction was void, and the court had no right in law to punish for any contempt of its unauthorized requirements. Such is the settled rule of decision in this court."

Similarly, in *Ex Parte Fisk*, 113 U. S. 713, it was held:

> "When, however, a court of the United States undertakes, by its process of contempt, to punish a man

> for refusing to comply with an order which that court had no authority to make, the order itself, being without jurisdiction, is void, and the order punishing for contempt is void."

See, also, *In Re Ayers*, 123 U. S. 443, and *In Re Sawyer*, 124 U. S. 200.

In the *Gompers* case, *supra*, (p. 436) the Court explicitly recognized that if the injunction there affected constitutional freedoms "it would be unnecessary to go further into an examination of the case or to determine whether the defendants had in fact disobeyed the prohibition contained in the injunction." See also *Thomas* v. *Collins*, 323 U. S. 516; *Fortenbury* v. *Superior Court of California*, 100 Cal. Dec. 407, and *In re Holle, et al.*, 145 N. Y. S. 388, 160 App. Div. 369.

The rule that orders which are either unconstitutional or beyond the jurisdiction of the issuing court cannot sustain contempt proceedings is peculiarly applicable to the instant case for two reasons. First, because as we shall soon more fully show, the Norris-La Guardia Act would lose all meaning and significance if orders issued contrary to its terms could be enforced by criminal contempt.

Second, the court below was expressly proceeding (R. 204) under Section 385 of the United States Code which limits the power of courts to impose punishment for disobedience only of *"lawful"* orders.[45] Under the common

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[45] "The . . . courts shall have power to impose and administer all necessary oaths, and to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority. Such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the said courts."

law it was no defense for a contemner to allege and prove that the order was unlawful. The only available defenses were the lack of jurisdiction of the court or the fact of compliance with the order. Accordingly, read literally, Section 385 imposes a greater limitation on the power of courts to punish for contempt than existed under the common law rule. However that may be, whatever meaning can possibly be assigned to the phrase "lawful order", it must include orders which the punishing court has jurisdiction to issue and orders which conform with the Constitution.

The Government contends that defendants could be held guilty of contempt even if the Norris-La Guardia Act applies (R. 76) and relies for its contention upon two cases, *U. S. v. Shipp*, 203 U. S. 563, and *Carter* v. *U. S.*, 135 F. (2d) 858.

The *Shipp* case is readily distinguishable on the ground that neither the Constitution nor any statute deprived the Supreme Court of jurisdiction to issue the order there involved; whereas here we are dealing with a temporary restraining order that both contravenes the Constitution and is, under an act of Congress specifically designed toward that end, beyond the jurisdiction of the court. The full significance of that distinction cannot be overemphasized because it involves the very quintessence of the Norris-La Guardia Act and shows the extremity of the error in the *Carter* decision which upheld a judgment for contempt of an order issued in violation of the Norris-La Guardia Act.

Among the basic reasons why Congress eliminated the injunctive process from labor disputes is that in ordinary situations the only reason and justification for temporary restraining orders is to maintain the *status quo*, whereas in labor cases courts "cannot preserve the so-called *status*

quo; the situation does not remain in equilibrium awaiting judgment upon full knowledge."[46]

It was recognized that through injunctions, and particularly through *ex parte* restraining orders, the courts had acted in a manner that was completely and unfairly disadvantageous to the unions and their members engaged in labor disputes; "that in the arena of industrial controversies . . . the forms of equity give rise to inequity;"[47] that in innumerable instances the mere issuance of a restraining order in and of itself was sufficient to break strikes, and this even before the union had the slightest opportunity for its day in court to show the legality and

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[46] Frankfurter and Greene, *The Labor Injunction*, p. 201. See also, Sec. 103.55 of the Wisconsin Labor Code (Anti-Injunction Act), Wis. Statutes of 1941, which provides:

"PUBLIC POLICY AS TO LABOR LITIGATION. In the interpretation and application of sections 103.56 to 103.59, the public policy of this state is declared to be:

"Equity procedure that permits a complaining party to obtain sweeping injunctive relief that is not preceded by or conditioned upon notice to and hearing of the responding party or parties, or that issues after hearing based upon written affidavits alone and not wholly or in part upon examination, confrontation and cross-examination of witnesses in open court, *is peculiarly subject to abuse in labor litigation for the reasons that*

"(1) *The status quo cannot be maintained but is necessarily altered by the injunction;*

"(2) Determination of issues of veracity and of probability of fact from affidavits of the opposing parties that are contradictory and, under the circumstances, untrustworthy rather than from oral examination in open court is subject to grave error;

"(3) Error in issuing the injunctive relief is usually irreparable to the opposing party; and

"(4) Delay incident to the normal course of appellate practice frequently makes ultimate correction of error in law or in fact unavailing in the particular case." (Emphasis supplied.)

See also, 47 Yale Law Journal 1136.

[47] From Frankfurter and Greene, *Congressional Power Over the Labor Injunction*, 31 Columbia Law Review 385, 386.

propriety of its action. "The restraining order and the preliminary injunction invoked in labor disputes reveal the most crucial points of legal maladjustment. Temporary injunctive relief without notice, or, if upon notice, relying upon dubious affidavits, serves the important function of staying defendant's conduct regardless of the ultimate justification of such restraint. The temporary proceedings, in other words, make the issue of final relief a practical nullity."[48]

Experience had shown that a large number of restraining orders never reached the point of preliminary injunctions, that a large number of preliminary injunctions never matured into permanent injunctions, and that a surprisingly large number of permanent injunctions were never the subject of appeal.[49] The reason for this is quite obvious. By the restraining order the union was robbed of the chance of exercising the only power it had in a labor dispute. It was robbed of the chance of availing itself of the lawful, economic weapons of the strike, the picket and the like. It can be said axiomatically that in many instances a strike temporarily delayed will be, because of that delay, completely defeated.[50]

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[48] Frankfurter and Greene, *The Labor Injunction*, p. 200.

[49] See S. Rep. 1060, 71st Cong. 2d Sess., part 2, p. 7:

"A large majority of injunction proceedings are never carried beyond a restraining order or temporary injunction and, therefore, are unlikely ever to reach the state of official reporting which is concerned largely with final decrees and with decisions of appellate courts."

[50] "Moreover, the suspension of strike activities, even temporarily, may defeat the strike for all practical purposes and foredoom its resumption, even if the injunction is later lifted." (*Ibid.* p. 201.)

See also, S. Rep. 1060, *supra*, p. 20:

"Injunctions are often applied for and issued for the moral effect that such injunctions will have in disheartening and discouraging employees engaged in a strike, rather than because of any real necessity to protect property."

Congress, carefully and realistically examining and analyzing all of these factors, reached the accurate and inescapable conclusion that the courts in justifying such restraining orders as maintaining the *status quo* were engaging in the purest kind of fancy. Congress realized that this was not a maintenance of the *status quo* but a complete abandonment of the *status quo.* Congress, we repeat, realized that the dynamism of a labor dispute was not, under true principles of equity, the proper subject of equity jurisdiction. The result was the Norris-La Guardia Act which curtailed the equity jurisdiction of Federal courts and took every precaution conceivable against evading its mandate.

The widespread adoption of the rule announced in the *Carter* case would completely emasculate the Norris-La Guardia Act. It is fair to say on the basis of the legislative history of the Norris-La Guardia Act that many Federal courts would seize upon this rule to frustrate the will of Congress. They would again resort to *ex parte* orders and enforce them vigorously, always asserting that under the *Carter* rule they had jurisdiction to determine their own jurisdiction and to maintain the *status quo* pending that determination. In this they would be avidly aided by plaintiffs in labor cases who would readily, in their pleadings, resort to every possible device in order to obscure the fact of a labor dispute being involved. This Court could not accept, even in a proceeding limited to criminal contempt, the principle of the *Carter* case without absolute certainty that the efficacy of the Norris-La Guardia Act would be thereby automatically and completely terminated.

The fiction of *status quo* is readily seen in the instant case. The Government asked the court below to maintain the *status quo* until it could render its declaratory judgment. In asking for a declaratory judgment of the rights

and duties created by the Krug-Lewis agreement the Government was obliged to and did allege that there is a controversy and dispute over the meaning of that agreement, particularly over the meaning of its duration clause. The Government claims that the Krug-Lewis agreement by its terms remains in force for the period of Government possession. And, as the Government correctly alleges, Mr. Lewis claims that the contract may be reopened in the manner done and that the agreement was effectively terminated as of midnight, November 20, 1946. There being this good faith difference of opinion respecting the meaning of the contract, the Government requested the court below to resolve the difference by way of declaratory judgment. So far, so good. But, see what happens where the Government also obtained "ancillary" relief in the form of a compulsive restraining order. Plainly, that relief was not ancillary, it did not maintain the *status quo*. That relief, granted *ex parte*, resolved the basic issue of the primary proceeding without even giving one of the parties to the contract an opportunity to present its views and argument and subjected that party to criminal process and inordinate fine. The restraining order by its terms had the direct effect of preventing the defendants from exercising their rights under that contract as they viewed them. To this day there has been no hearing on the issues in the primary case. 'If, in the indeterminable future the court below shall render a declaratory judgment sustaining Mr. Lewis' views on his rights under the Krug-Lewis agreement, and no one can gainsay at this stage of the proceedings that the court might so decide, then the defendants would have won a pyrrhic victory. It would be of little satisfaction and of no value to defendants, if, say, in May of 1947, it is decided that the Union did have the contractual right to terminate the agreement at mid-

night on November 20th where, as here, during all that time defendants were effectively and coercively restrained from exercising that right. Indeed, under the *Carter* rule and the decision of the court below the United Mine Workers could easily be bankrupt for doing what it had every lawful right to do.

It was precisely to avoid grotesque situations of this nature that the Norris-La Guardia Act deprived Federal courts of the power to issue temporary orders as well as permanent injunctions in labor disputes.[51] Obviously, the only device whereby a Federal district court can maintain the *status quo* while determining its own jurisdiction in a case of this nature is by the issuance of temporary orders, and the act expressly precludes the temporary order issued in this case.

Even if it could be assumed that the rule announced in the *Carter* case is correct, the judgments of the court below must be reversed for two reasons:

(1) The *Carter* rule is expressly and necessarily limited to criminal contempt proceedings. But, for want of compliance with Rule 42 of the Federal Rules of Criminal Procedure as we shall hereinafter show, there was no such proceeding before the District Court in the case at bar. It was conceded in the *Carter* case that the plaintiff could not have a remedy for violation of an order he had no right to have. So, too, in this case. If this Court should find that the temporary restraining order was contrary to the Norris-La Guardia Act, then the plaintiff is not entitled to remedial

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[51] Independent of the Norris-La Guardia Act the restraining orders and preliminary injunction should not have been granted because, without hearing and in the face of doubtful legal claims, they directed an affirmative act which settled the merits of the case. *Beidenkopf* v. *Ins. Co.*, 160 Iowa 629, 142 N. W. 434; *Trust Co.* v. *Crider*, 102 Fla. 593, 136 So. 434; *Penn. R. Co.* v. *Kelley*, 77 N. J. Eq. 129, 75 A. 758; *Powhatan Coal & Coke Co.* v. *Ritz*, 60 W. Va. 395, 56 S. E. 257.

relief and there could be no civil contempt. The Court below, having found and adjudged the defendants guilty of both civil and criminal contempt and having imposed fines without in any way allocating or apportioning them, the judgments must be reversed.

(2) Once the Court finds that the Norris-La Guardia Act applies, then defendants have a clear statutory right to a trial by jury (Section 111),[52] regardless of whether or not the *Carter* rule is adopted. The court below, having concluded before the trial that the Norris-La Guardia Act did not apply (R. 203), proceeded in disregard of defendants' right of trial by jury.

Under rule 42(b) of the Federal Rules of Criminal Procedure relating to "criminal contempt", "the defendant is entitled to a trial by jury in any case in which an act of Congress so provides." Rule 23(a) of the same Rules, relating to "trial by jury or by the court", provides that

> "Cases required to be tried by jury shall be so tried unless the defendant waives a jury trial in writing with the approval of the court and the consent of the government."

Accordingly, it was mandatory upon the Court to order a jury trial, and since the defendants herein did not in any way waive a jury trial in writing or otherwise, but affirmatively declined to do so (R. 114), the Court was clearly

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[52] "Sec. 111. Contempts; speedy and public trial; jury.—In all cases arising under Sections 101-115 of this title in which a person shall be charged with contempt in a court of the United States (as herein defined), the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed: *Provided*, That this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders or process of the court. Mar. 23, 1932, c. 90, Secs. 11, 47 Stat. 72."

without power to enter a judgment of conviction herein without the verdict of a jury.

The scope of Section 11 of the Act is well described in the Report of the Committee on the Judiciary,[53] in which it is said:

> "Section 11: Section 11 provides that in cases in which a person shall be charged with contempt for violating injunctive orders the accused shall enjoy the right to a speedy and public trial by a jury . . . That Congress has authority to provide for such a trial by jury has been upheld by the Supreme Court of the United States in the case of Michaelson *v.* U. S. ex rel. Chicago, St. Paul, Milwaukee & Omaha Railway Co. (266 U. S. 42), wherein the Supreme Court upheld a similar provision contained in section 21 of the Clayton Act."

The tyranny involved in contempt prosecutions received major consideration in the Senate Committee on the Judiciary[54] where it is appropriately said:

> "It is amazing to realize that in the last 40 years there has developed in the American courts the practice of writing a special law to fit the individual case by judges in issuing labor injunctions; and that thereupon the judge, who himself wrote the law, has undertaken to prescribe the penalty for its violation and to punish the violator without permitting the accused to enjoy a trial by jury or even to insist upon a trial before another judge . . .
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> . . . . . .
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> "There can be no question, therefore, that there has been created, as a result of writing law into injunction orders and then enforcing those orders by the same judge who wrote them without a grant of trial by jury, that condition of uniting the two powers of making and

[53] H. R. Rep. 669, 72nd Cong., 1st Sess., p. 10.
[54] S. Rep. 1060, Part 2, 71st Cong., 2d Sess., pp. 16-17.

enforcing laws in one person or one body of men wherein, using the language of Blackstone, 'there can be no public liberty.'

"It is difficult to see how any civilized people could indefinitely submit to such tyrannical procedure. It is not difficult to understand how such cruel laws, made not by any legislature but by a judge upon the bench, should bring our Federal courts into disrepute. Neither is it difficult to see how such injunctions, violating the conscience of civilization, should frighten persons against whom such injunctions are issued into desperation. What free American citizen is willing to submit to the violation of his sacred rights of human liberty and freedom?"

It is apparent from the foregoing that the right of trial by jury guaranteed in Section 11 of the Act is as fundamental as that provided in the Sixth Amendment. It is mandatory for reasons of public policy, and is not to be dispensed with except on the clearest showing of waiver by the defendant in like manner as provided in Rule 23(a), Rules of Criminal Procedure. The court below erroneously announced before trial that the Norris-La Guardia Act did not apply. By this ruling the defendants' right to a jury trial predicated on Section 11 was effectively foreclosed.

IV

Judgment Against the United Mine Workers of America Is Not Warranted Under the Law and the Evidence.

The District Court's judgment that the United Mine Workers of America is guilty of contempt must be tested by the criterion provided in section 6 of the Norris-La Guardia Act (29 U. S. C. A., Sec. 106).[55]

[55] Sec. 6 reads thus:

"No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United

One of the basic purposes of section 6 was to insulate labor unions against responsibility for the unlawful conduct of their members, agents, employees and officers. It contemplated that actual, not theoretical, culpability or complicity could provide a basis for Union responsibility. Repetitive use of the word "actual" in the congressional enactment under consideration undeniably evidences the intent of Congress that Union responsibility for unlawful acts should rest upon factual realities and not juristic imputations.[56] Tested by the requirements of section 6, it is clear that judgment against the defendant United Mine Workers of America is unwarranted because there is neither clear proof of actual participtpion in, nor actual authorization of, unlawful acts, nor ratification of such acts after actual knowledge.

Despite the professions of the court below that the temporary restraining order was not designed as a directive to the 400,000 bituminous coal miners, the terms thereof by specific language, as defendants have elsewhere herein shown, applied to the miners themselves, since the purposeful objective of the restraining order was to assure the continued production of coal. In final analysis achievement

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States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof."

[56] Use of "actual" in the statutory text of section 6 excludes the idea of imposing responsibility on labor unions under the theory of cases dealing with acts *mala prohibita*, illustrated by *Egan* v. *United States*, 137 F. (2d) 369, wherein the court considered the alleged violation of the Public Utility Holding Company Act (15 USCA § 791(h)), which Act prohibited political contributions by any registered public holding company. See also Burdick, *The Law of Crimes*, § 180.

See also S. Rep. 163, *supra*, which shows that Section 6 "is concerned especially with establishing a rule of evidence" and that "clear proof should be required, so that . . . criminal responsibility *should not be imputed* but proven beyond reasonable doubt in order to impose liability." (Italics supplied.)

thereof could become real only if the miners complied. Imposition of judgment, however, is not upon the miners but upon the United Mine Workers of America, an entity separate and distinct from the miners themselves.[57]

Even prior to the adoption of section 6, there had been judicial rejection of the doctrine of vicarious responsibility against the defendant union.[58] The adoption of section 6 imposed additional requirements, among them that proof of union activity, upon which responsibility might be premised, should be "clear." Assuming, therefore, that there was proof that individual miners actually ceased to produce coal[59] and that such conduct was unlawful because it contemned the order of the court below, it would still be necessary to show by clear proof that the defendant union had actually participated in, authorized or ratified such conduct. In *Coronado Coal Co.* v. *United Mine Workers of America*, 268 U. S. 295, 304, this Court declared that:

> ". . . Certainly it must be clearly shown in order to impose such a liability on an association of 450,000 men that what was done was done by their agents in accordance with their fundamental agreement of association."[60]

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[57] *United Mine Workers of America* v. *Coronado Coal Co.*, 259 U. S. 344; *Coronado Coal Co.* v. *United Mine Workers of America*, 268 U. S. 295.

[58] Idem. As to criminal responsibility in *U. S.* v. *Local 807 of I. Brotherhood*, 118 F. (2d) 684, 688 (CCA 2), it is said:

> "It is hornbook law that, absent a clear legislative intent, an unincorporated association does not commit crimes, 7 C.J.S., Associations, sec 17, p. 43."

[59] Defendants deny that this fact is established by any competent proof in the record.

[60] Article IX, Sec. 27 of the Union's Constitution reads:

> "The (executive) Board shall have power between Conventions, by a two-thirds vote, to recommend the calling of a strike, but under no circumstance shall it call a strike until approved by a referendum vote of the miners." (R. 522.)

There is nothing in the record showing either a referendum approval of the membership or a strike call by the Board.

Nor does the fact that the defendant union took no affirmative action in disapproval of the miners' conduct warrant the imposition of a fine upon the defendant union. The precise contention, namely that unions must take disciplinary action against offending members in order to escape responsibility, was rejected in the first *Coronado* case, *supra*, p. 395.

There remains only the question of the union's responsibility for the conduct of defendant Lewis. The court below was positive in its statements that the purpose of the restraining order was to direct Lewis to withdraw the termination notice.[61] The essence of the court's finding that Lewis had contemned the order of the court below is found in his failure to withdraw the termination notice.[62] Hence the imposition of fines is based upon that omission. Since the Union, if it is to be regarded as an entity, can act only through its officers and agents, and since the Government complained only of the passive conduct of the defendant Lewis and not of any other officer or agent of the union, it is necessary to ascertain whether the defendant union is responsible for such passive conduct, assuming, of course, that defendant Lewis did contemn the order of November 18, 1946.[63]

It may be stated without fear of contradiction that the evidence adduced in this record does not show by any kind of proof that there was any actual participation or authorization by the defendant union directing Lewis to

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[61] See Record, pp. 172-3, 178.

[62] See Paragraph 34, Findings of Fact, Record, p. 97.

[63] Constitution of the United Mine Workers of America vests the supreme executive and judicial powers of the union in its executive officers and executive board between International Conventions. Art. III, sec. 1 (R., 517). None of the officers of the union, other than John L. Lewis, and none of the members of the executive board is made a party defendant to the instant proceeding, nor is there complaint asserted by the Government against any officer or board member, other than defendant Lewis as president.

contemn the restraining order nor is there any evidence that the defendant union affirmatively ratified the passive conduct of the defendant Lewis so as to bring the defendant union within the purview of the language of section 6. In *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344, this Court—even prior to the enactment of the Norris-La Guardia Act—refused to impose liability upon the defendant union because of activities of its national president. This Court there stated (p. 394):

> ". . . It would be going very far to consider such acts of the president alone a ratification by the International Board, creating liability for a past tort. The president had no authority to order or ratify a local strike . . . If the International body had interfered or if it had assumed liability by ratification, different questions would have arisen."

That mere agency of an officer does not suffice to render responsible a labor union for the officer's act, even though such act may be regarded as unlawful, is recognized in *United States* v. *International Fur Workers Union, etc.*, 100 F. (2d) 541, (C. C. A. 2, 1938) (certiorari denied, 306 U. S. 653, wherein the court stated (p. 547)):

> "But an officer of an unincorporated association, no more than an officer of a corporation, is not authorized merely by virtue of his office to make his principal a party to an unlawful conspiracy."

In that case the Circuit Court of Appeals rejected the theory of vicarious liability and held that the District Court had erred because it had "excluded the issue whether the unions had authorized or ratified what their officers did upon their behalf."[64]

In the absence of any, much less the "clear" proof required by section 6, judgment against the defendant

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[64] See also *Cinderella Theater Co.* v. *Sign Writers' Local Union*, 6 F. Supp. 164 (DC, Mich., 1934).

union in any amount is unwarranted and erroneous and must be reversed. And the same conclusion is required under common law principles, even if the Norris-La Guardia Act is found not to apply.

V

The Pleadings and Procedures in This Case Cannot Sustain Judgments in Civil and Criminal Contempt, or Either.

A. The Pleadings

The contempt charges under consideration are grounded in a petition filed by the Attorney General of the United States, the expressed purpose of which was to secure "a rule against the parties above named to show cause why they should not be *punished* as and for a contempt of this Honorable Court and for such further orders in the premises as are just and proper" (Emphasis supplied) (R. 66). The Rule to Show Cause issued on the petition directed defendants to appear to show cause "why they should not be *punished as and for a contempt of this court*" (Emphasis supplied) (R. 73). Thereafter defendants filed their motion to discharge and vacate said rule (R. 82) asserting, *inter alia*, that the proceeding was for criminal contempt. Clearly under the prayer of the Government's petition and under the language of the rule to show cause, the assertions of defendants that what the Government sought in the contempt proceedings was punitive, rather than remedial, in character, were fully justified.

The essence of defendants' contentions on its motion to discharge and vacate the rule to show cause was (1) that the relief sought in the petition for said rule sounded in criminal contempt and the rule to show cause would not support an averment or judgment of civil contempt; (2) being criminal, the contempt proceeding had to be

initiated in the manner of, and pursuant to the requirements of Rule 42(b) of the Federal Rules of Criminal Procedure for the District Courts of the United States; and (3) the Government having failed to comply with said Rule 42(b), there was in fact no proper pleading upon which defendants could be tried for either civil or criminal contempt. The District Court rejected these contentions to the prejudice of the defendants.

B. The Relief Sought in the Petition Sounded in Criminal Contempt

A well established principle in the law of contempt is that where the contempt proceeding is remedial in character, is for the benefit of the complainant and relates to a matter of private interest only, there is involved a civil contempt, whereas if it is to vindicate the authority of the Court and for the public welfare, the contempt is criminal. Dangel, Contempt, p. 5; *Gompers* v. *Buck Stove and Range Company*, 221 U. S. 418; *Merchants Stock & Grain Company* v. *Board of Trade of City of Chicago*, 201 Fed. 20, 23. Thus, "civil" is matched with "remedial" purposes while "criminal" is matched with "punitive" purposes.

Because, in the instant proceeding, the temporary restraining order is based upon public interest, public welfare and safety, defendants assert there is no sanction for the Government to seek a judgment in civil contempt. Nor is this contention dissipated by this Court's language in *McCrone* v. *United States*, 307 U. S. 61, that "the mere presence of the United States as a party acting through its agents, does not impress upon the controversy the elements of a criminal proceeding." The determination that the proceeding in that case was remedial rested in part upon the factor that "Congress has expressly authorized

such a proceeding by an agent of the United States in the Federal courts." In the instant case, not only is there no such congressional authorization but, as we have herein shown, it was the clear design of Congress to deny Government the right to utilize the injunctive process. Accordingly, in the absence of statutory sanction and representing no private interest of its own, the Government has no standing in this case as enables it to maintain proceedings for civil contempt. *Federal Trade Commission* v. *McLean & Son*, 94 F. (2d) 802.

But even assuming the Government may have sought remedial relief here, it did not do so by its petition seeking relief. In *Creekmore* v. *United States*, 237 F. 743, the court stated that "one of the chief functions of a prayer in such informations is to show whether it is sought to convict the defendant of a civil or criminal contempt."[65] The determining factor employed by this Court in the *McCrone* case, *supra*, in appraising that proceeding as remedial was the relief sought in the petition. The Court's opinion, in part, reads (pp. 64, 65):

> ". . . Here, the summons served on petitioner required only that he testify in a tax inquiry properly conducted by an agent of the Bureau of Internal Revenue. *And the agent's petition to the District Court, to which we may look in determining the nature of the proceeding, invoked judicial assistance solely in obtaining petitioner's testimony.* Authority of the Court was sought to *buttress the procedure for collection of taxes* and not in 'vindication of the public justice', as in criminal cases." (Emphasis supplied.)

In the instant case the prayer for relief did not address itself toward any coercive or remedial action on behalf of the complainant but solely "for the purpose of securing

[65] See also Dangel, *Contempt*, p. 5, where it is stated that the "prayer of the petition for relief is determinative of the nature of the proceedings."

a rule against the parties above named to show cause why they should not be punished as and for a contempt of this Honorable Court" (R. 87) or, as appears in the supporting affidavit of Captain N. H. Collisson, Coal Mines Administrator, that "the said defendants have interfered with this Court's jurisdiction" (R. 68). Hence, it may not be gainsaid that the purpose of the contempt proceeding was purely punitive and in vindication of the authority of the District Court and therefore criminal in character.

The conclusion of law by the court below that the defendants were guilty "beyond a reasonable doubt" is one which indicates that the court was using the formula of criminal procedure.[66] Moreover, the judgments themselves negate the characteristic accorded them as both civil and criminal. In the case of defendant Lewis, he "was ordered to pay a fine in the sum of $10,000.00" whereas the Union was "ordered to pay a fine in the sum of $3,500,000." This is not the form of judgment employed in a civil contempt proceeding. *In re Farkas*, 204 Fed. 343, recites that—

> "Where a person is in contempt for failure to perform a duty under the bankrupt law, he should first be allowed to purge himself of the civil contempt by performing the required duty . . ."

See also *Gompers* v. *Buck Stove & Range Co.*, 221 U. S. 418, wherein it is said (p. 442):

> ". . . But imprisonment for civil contempt is ordered where the defendant has refused to do an affirmative act required by the provisions of an order which, either in form or substance, was mandatory in its character. Imprisonment in such cases is not inflicted as a punish-

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[66] *Bessette* v. *Conkey Co.*, 194 U. S. 324, 338; *Schwartz* v. *United States*, 217 Fed. 866; *Oates* v. *United States*, 233 Fed. 201, 206 (CCA 4, 1916); See Frankfurter and Greene, *The Labor Injunction*, pp. 58, 59.

ment, but is intended to be remedial by coercing the defendant to do what he had refused to do. The decree in such cases is that the defendant stand committed unless and until he performs the affirmative act required by the court's order."

In *Smith* v. *Miller*, 197 N. E. 893 (Ind., 1935) the court rejected a contention that the contempt was civil because, as the court stated, "The judgment makes no provision that the fine be paid to or for the benefit of the plaintiff," and this result obtained despite the fact that evidence "heard by the court upon questions presented, would indicate that the proceedings were for civil contempt."

Nor was there any proof to sustain a judgment in civil contempt. A fine in an amount which is unrelated to the injury asserted by the complainant is punitive and not remedial. *Oakland Coal Co.* v. *Wilson*, 196 Ind. 501, 149 N. E. 54; *Woodworth* v. *Woodworth*, 173 Okla. 554, 48 P. (2d) 1052 (1935). See *Judelshon* v. *Black*, 64 F. (2d) 116 (C. C. A. 2, 1933), where it was held that when defendant's violation has caused plaintiff no injury, there is no ground for a civil contempt proceeding. The Government in the instant proceeding did not prove any monetary damages whatsoever upon which any compensation might be founded. The record shows that the fine of $3,500,000 was premised solely upon the arbitrary recommendation of counsel for the Government that the Union be fined $250,000 a day. Clearly there is no causal relationship between the fine imposed and the alleged acts for which the Government sought contempt action.

Accordingly, defendants' position that the proceeding was for alleged criminal contempt cannot be effectively refuted; and it follows therefrom that the judgments in civil contempt cannot be sustained.

C. The Contempt Proceeding Instituted by the Government Was an Improper One Because it Was Ancillary to the Main Cause and Because it Did Not Comply With Rule 42(b).

As shown, the proceeding instituted could only have been for criminal contempt; and the decisions announcing the principle that, in an action for criminal contempt the proceeding is not a part of the main cause and not ancillary but independent and separate, are numerous and of long duration. *United States ex rel. W. Va.-Pittsburgh Coal Co.* v. *Bittner*, 11 F. (2d) 93 (C. C. A. 4, 1926); *Gompers* v. *Buck Stove and Range Company, supra; Federal Trade Commission* v. *Abe McLean & Son*, 94 F. (2d) 802.

Rule 42(b) of the Federal Rules of Criminal Procedure for the District Court of the United States, effective on March 21, 1946, provides specifically that "A criminal contempt . . . shall be prosecuted on notice. The notice shall state the time and place of hearing. . . . and shall state the essential facts constituting the criminal contempt charged and *describe it as such* . . ." (Emphasis supplied.)

There may not, of course, be any denial that the Government did not prosecute the defendants on any notice, as Rule 42(b) commands, nor did the rule to show cause describe the contempt as criminal in nature. Nor is there compliance with the third requirement, namely, that the notice shall state the essential facts constituting the criminal contempt charged. Even though it might be assumed that the Government's petition may be classed to serve in lieu of notice, it does not "state the essential facts constituting the criminal contempt charged." As the record shows, the charging portion of the Government's petition is premised, not upon any facts known by the Attorney General, not upon facts given to him by another which he

believes to be true, but solely from assertions "on information and belief" of N. H. Collisson (R. 66-68) who does not recite the sources of his information. Instead of facts, the charge is upon hearsay twice removed from the facts they purport to charge. "The exaction of positive allegations to support the rule to show cause is intended to protect the Court from the improvident institution of contempt proceedings and useless investigation as to the breach of their orders which the proof may show were not violated." *In re Rice*, 181 F. 217 (C. C., M. D., Ala., 1910).

There is ample judicial authority that an affidavit upon information and belief is insufficient upon which to base constructive contempt proceedings, and the contemned court acquires no jurisdiction thereunder to issue an attachment for contempt. See *State ex rel. Harvey* v. *Newton*, 112 N. W. 52 (N. D., 1910), citing numerous cases from other jurisdictions.[67]

We recognize that there is some Federal authority which permits the issuance of rules premised upon affidavits of information and belief where such affidavits are those of Federal district attorneys. See *Conley* v. *United States*, 59 F. (2d) 929. See also, *Creekmore* v. *United States*, 237 F. 743, where verification was by a United States district attorney to the effect that the facts stated were true and correct upon information and belief. But, such is not the

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[67] In its opinion (p. 54) the court quoted from *Kaeppler* v. *Bank*, 8 N. D. 411, 79 N. W. 869:

"As the application for the arrest is an ex parte proceeding, and as it is in derogation of personal liberty, the least that can be required is that the application make an undoubted prima facie case. Upon well-settled, general principles this cannot be done, in the absence of statutory sanction, by an affidavit based upon information and belief, for the very evident reason that such affidavit is not competent information. It is merely hearsay. If the affiant were on the stand, he would not be permitted to testify to any such matter, and he will certainly be restricted in an ex parte affidavit, where he is subjected to no cross-examination."

instant case, where the affidavit, on information and belief, is that of a person other than the Attorney General.

In *Ludden* v. *State*, 48 N. W. 61 (Neb. 1891), a restraining order issued by a court was allegedly violated according to affidavits made by persons, other than the prosecuting officer, on information and belief.[68] Rejecting a contention that such affidavits sufficed, the court stated (p. 64):

> "A proceeding in contempt for acts not committed in the presence of the court is instituted by filing an information under oath *stating facts* constituting the alleged contempt . . . . The charge must be direct that the party has committed the act complained of. In all matters based on the oath of a party charging another with the commission of an offense by which he may be deprived of his liberty, the charge must be specific and direct. *Mere hearsay will not suffice.*" (Emphasis supplied.)

These requisites of proper and sufficient initiatory pleadings and positive allegations in criminal contempt proceedings[69] are mandatory jurisdictional requirements of Rule 42(b) under its specific provisions that criminal contempt

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[68] The rule is stated generally in 12 Am. Jur., Contempt, Sec. 68 thus:

"In most jurisdictions an affidavit on information and belief is wholly insufficient upon which to base constructive contempt proceedings, and no jurisdiction can be acquired by the court thereunder."

See 17 C.J.S., Contempt, Sec. 72(a), where the general rule is stated that "A sufficient initiatory accusation of affidavit in proceedings to punish contempts committed out of the court's presence is jurisdictional." See also *Muffly* v. *State*, 261 N. W. 560 (Neb. 1935). The sufficiency may be tested by motion to discharge the rule. 17 C.J.S., Contempt, Sec. 72, p. 90.

Moreover, the petition filed by the Attorney General was not verified. "It is the practice to verify the pleadings in criminal contempt." Cyc. of Federal Procedure (2d Ed.), Sec. 7261.

[69] Requirements of Rule 42(b) parallel procedural modes of Section 268 Judicial Code (28 U. S. C. A. 387) providing that in criminal contempts, the rule to show cause is premised upon lawful process, affidavit of some creditable person, or information filed by a district attorney.

shall be prosecuted upon notice which shall state the essential facts constituting the criminal contempt charge.

The record registers the fact that the pertinency of Rule 42 (b) to the instant proceeding was specifically directed to the attention of the Government's attorneys and of the court, and it likewise reflects their respective persistent attitudes not to be bound or governed thereby.

The Court's attention is respectfully directed to the admission of counsel for the Government (R. 196) that the District Court's order was patterned on Section 268 of the Judicial Code (28 U. S. C. A. 386) which deals exclusively with criminal contempts "to vindicate the authority of the Court and punish the act of disobedience as a public wrong." *Michaelson* v. *United States*, 266 U. S. 42. The Government then seeks to avoid the fact that Section 386 is limited to criminal contempt by avowing compliance with Section 389 (28 U. S. C. A. 389) which provides, in part, that "such proceeding may be punished in conformity to the usages at law and in equity prevailing on October 15, 1914" (R. 196, 197). Even assuming that these "usages" are applicable to this case, it is clear that they would not sustain both civil and criminal contempt where, as here, the rule to show cause sought punishment only.[70] *McCrone* v. *U. S.*, *supra*, at p. 65.

In any case, the "usages" mentioned in Section 389 have, we submit, been superseded by Rule 42 (b) which has the same force and effect as acts of legislation. *Weil* v. *Neary*, 278 U. S. 160; *Cyc. of Federal Procedure* (2nd Ed.) 699; *United States* v. *Infusino*, 131 F. (2d) 617.

The attempt of the Government to evade the requirements of Rule 42 (b) is voiced by Government's counsel thus (R. 195, 196):

". . . the distinction between civil and criminal contempt is, as the Court has pointed out, a difficult

[70]Government's counsel too, tacitly admitted that these proceedings were dominantly criminal (R. 197).

> one. . . . In this case I think the simple answer is, since the complainant is the United States, or the people of the United States, that this contempt is both civil and criminal."

Since Rule 42 (b) involved the notice relating to criminal contempt, which may be invoked only by the sovereign government itself, certainly there can be no merit to the contention that the rule has no application to the Federal Government.

We submit that in the light of existing principles of law and under the plain language and underlying purpose of Rule 42(b) it was grossly erroneous upon an ancillary, single pleading calling for punishment only, and in disregard of the requirements of Rule 42(b), for the court below to enter a punishment for both civil and criminal contempt.

A clear perspective and understanding of the reason for the adoption of Rule 42 (b) involves the distinctions between civil and criminal contempt. Courts, text book authors and writers of legal periodicals are uniform in their observations that the law of contempt was, before the adoption by this Court of Rule 42 of the Federal Rules of Criminal procedure, in a confused and uncertain state, and this difficulty may be traced to attempted distinctions between civil and criminal contempt. See Swaysee, *Contempt of Court in Labor Injunction Cases* (1935), pp. 21-22; Frankfurter and Greene, *The Labor Injunction*, p. 127; Moskovitz, *Contempt of Injunctions*, 43 Columbia L. R. 780.

Because of the existence and persistency of this confusion Judge Learned Hand, in *McCann* v. *New York Stock Exchange*, 80 F. (2d) 211, 214, suggested a "simple and certain test" that would tend to eliminate the confusion. He said that the distinction could be "made plain if the judge enters an order in limine, directing the attorney *to prosecute the respondent criminally* on behalf of the court." (Emphasis supplied.)

The express purpose of Rule 42 (b), as stated by the Advisory Committee that drafted it, was to obviate the frequent confusion between criminal and civil contempt and the Committee adopted the suggestion made in the *McCann* case.

We are cognizant of the decisions of some Federal courts antedating the promulgation of Rule 42 (b) which support the right to prosecute both civil and criminal contempts in a single proceeding. *Kreplik* v. *Couch Patents Co.*, 190 F. 565 (C. C. A. 1, 1911); *Wilson* v. *Byron Jackson Co.*, 93 F. (2d) 577. But we submit that these cases are rendered completely inapplicable by the promulgation of Rule 42 (b).

Since prior decisions allowed the joinder of civil and criminal contempts and since, at very least, a portion of the confusion stemmed from such joinders, it is obvious that the plain purpose of the Supreme Court in adopting said rule was to effectuate a definite cleavage between the two classes of contempt and to provide for a criminal contempt proceeding which would be separate and distinct from one relating to civil contempt. Only if the separation is decisive may the confusion be dissipated.

The rule, in its requirement, to "describe it as such" denotes unequivocally that it must be a criminal contempt. To adopt the position of the Government that a proceeding for contempt which seeks solely to punish the alleged contemner and which seeks no remedial relief may be initiated as ancillary to the main cause and characterized as both civil and criminal, without regard to the rule, renders completely futile and meaningless the rule itself.

The explanation given by the Government for its conspicuous failure to comply with Rule 42 (b) is wholly untenable. To say, as the Government does, that the purpose and intent of Rule 42 (b) was met by the fact that during the course of the argument on the motion to vacate and dis-

charge the rule to show cause, the Government intended to prove both criminal and civil contempt, is wholly to misconceive the language and import of the rule. As indicated, the very purpose of the rule was to establish a definite cleavage between the two classes of contempt and to advise defendants in the pleading stages of the fact that they were to meet a criminal charge.

One of the obvious reasons why notice of the precise nature of the proceeding is required by Rule 42 (b) is that the procedures in, and incidents and consequences of, criminal cases are altogether different from those in civil cases.[71] Criminal contempt has been classed as a criminal offense.[72] In criminal contempts as in criminal cases the presumption of innocence obtains; proof of guilt must be beyond reasonable doubt; and the defendant may not be compelled to be a witness against himself.[73] A contemner in a criminal contempt proceeding and a criminal share the same fate.[74] Certainly the defendant is entitled to know of what procedures he can avail himself. In the past defend-

[71] In speaking of remedial relief, Frankfurter and Greene, *The Labor Injunction*, p. 128, states:

> "The burden of proof, the rules of evidence and the measure of damages will be drawn from the customary practice in civil litigation."

[72] *Michaelson* v. *United States*, 266 U. S. 42; *Gompers* v. *United States*, 233 U. S. 604, 610-11, where it is stated:

> "So truly are they crimes that it seems to be proved that in the very early law they were punished only by the usual criminal procedure . . ."

U. S. v. *Goldman*, 277 U. S. 229, 235:

> "The only substantial difference between such a proceeding for criminal contempt and a criminal prosecution is that in the one the act complained of is a violation of a decree and in the other the violation of a law."

[73] *Gompers* v. *Buck Stove & Range Co.*, *supra*, p. 444; *Michaelson* v. *United States*, *supra*; *Ex Parte Grossman*, 267 U. S. 87, 117.

[74] Frankfurter and Greene, *The Labor Injunction*, p. 59.

ants in contempt cases were placed in an impossible dilemma, since frequently the question of whether it was a civil contempt or a criminal contempt was not determined until the court of last resort had announced its decision.

In no other phase of jurisprudence did such difficult dilemmas exist. See, for example, *Helvering* v. *Mitchell*, 303 U. S. 391, 402, where the Court stated:

> ". . . That Congress provided a distinctly civil procedure for the collection of the additional 50 per centum indicates clearly that it intended a civil, not a criminal, sanction. *Civil procedure is incompatible with the accepted rules and constitutional guaranties governing the trial of criminal prosecutions, and where civil procedure is prescribed for the enforcement of remedial sanctions, those rules and guaranties do not apply.*" (Emphasis supplied.)

Because the Government failed to proceed in the manner provided by and in compliance with Rule 42 (b), it is submitted that the District Court had no initiatory pleading upon which to premise either its rule to show cause, the hearing thereon or its judgments. The motion to vacate and discharge the rule to show cause should have been sustained. Moreover, the judgments of the Court were void.

VI

The Fines Imposed on the United Mine Workers of America and John L. Lewis Are Excessive and Are in No Way Related to Any Evidence Admitted at the Hearing.

As heretofore shown, Congress, in enacting the War Labor Disputes Act, carefully and deliberately limited the Government to criminal procedures expressly eschewing suggestions that injunctions should lie for interference with production in Government-seized enterprises. Consistent with any criminal act Congress imposed a fixed

penalty for violation, one year imprisonment or a fine of $1,000 or both. By blithely ignoring this Congressional mandate the Government has succeeded in imposing a judgment against John L. Lewis which is ~~ten~~ two times the limit fixed by Congress and a judgment against the United Mine Workers of America which is ~~thirty-five~~ seven hundred times the penalty fixed by Congress! And this, not after the full and careful trial prescribed by the Constitution and affording defendants safeguards that date back to the Magna Charta, but upon resort to the extraordinary process of an *ex parte* temporary restraining order.[75] We say that on the bare statement of the fore-going, undisputed facts there is an open and flagrant violation of the Eighth Amendment which prohibits the imposing of "excessive fines".

It is plain that fines imposed for civil contempt must be established by satisfactory evidence[76] and must be paid to or for the benefit of the injured party to the extent that he was injured.[77] Here, none of these essential requirements were met.

The Government arbitrarily picked out the figure of $250,000 a day in recommending the amount of the fine of the United Mine Workers of America (R., 321) and the court accepted the recommendation *in toto* without any apparent reason other than that the Government had recommended it.

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[75] "When a crime is formally charged, the accused is protected by safeguards which summarize experience. But if the charge is contempt of court, the judge, himself the accuser, determines 'guilt or innocence' . . . Contempt proceedings, in these industrial controversies, partake more of 'executive attempts at law enforcement' than of 'even-handed' justice". Frankfurter and Greene, *Congressional Power Over The Labor Injunction*, 31 Columbia Law Rev. 385, 412.

[76] 17 C.J.S. Sec. 95; *Judelshon* v. *Black*, *supra*; *Oakland Coal Co.* v. *Wilson*, *supra*."

[77] *Gompers* v. *Buck Stove & Range Company*, *supra*; *McCann* v. *New York Stock Exchange*, *supra*, 214.

The fines were not apportioned as between the civil and criminal contempts found to have been committed. Accordingly, it is impossible to state how much of the fines are to be assigned to the civil contempt in order to make whole whoever may have been damaged by that alleged contempt. Indeed, there is nothing by way of testimony indicating how much, if any, money damage plaintiff had sustained. True, the testimony of Mr. Haas (R. 295) and Dr. Hauser (R. 292) was addressed to the economic repercussions of the cessation of work in the mines, and imposing statistics were produced. But the testimony and statistics furnished by these two witnesses dealt in the main with losses in the national income, that is, with losses to various private enterprises—not parties to the case—and not with losses to the plaintiff seeking relief. Moreover, and this is of the first importance, that testimony was necessarily speculative in the extreme. It was premised on several unproved assumptions—basic among which was a conjecture as to how long the stoppage of work would continue, which events have repudiated.

Actually, there was undisputed testimony (R. 290)— and the court so found (R. 98)—that on November 20th, 1946, when the stoppage began there was on hand approximately 76 million tons of bituminous coal which would, at normal rate of consumption, last about thirty-seven days. This Court can take judicial notice of the fact that the miners returned to work within 17 days, on December 7th. Thus, even if we should accept the testimony of the Government's witnesses we would be forced to the conclusion that no civil damages have been proved.

Further, there is no direction that the fines be paid to the plaintiff and in the absence of such direction it must have been contemplated, that payment should be made to the Clerk of the District Court. (District of Columbia Code, Title 11, Secs. 330,331).

This Court may take judicial notice of the fact that the funds of the United Mine Workers of America belong to, among others, approximately 22,000 mine workers in Canada, approximately 75,000 anthracite miners in the United States in no way involved in the controversy, and approximately 25,000 maintenance and supervisory men and others, members of the United Mine Workers of America, who remained at work during the time in question.

No more convincing proof of the soundness of the reasons which prompted abolition of injunctive jurisdiction in labor disputes could be had than this grotesque result whereby the monies of these working men, in no way involved in this case and outside of the jurisdiction of the District Court for the District of Columbia, are directed to be paid over to the treasury of the District of Columbia for the relief and benefit, presumably, of the taxpayers in the District of Columbia.

A diligent search of the authorities fails to disclose that a fine of the tremendous magnitude here involved has ever been imposed by any court for any contempt, civil or criminal. Nor can we discover any instance where there has been such a completely disdainful disregard for elementary demands of justice and fair play which are grounded in our Constitution and which require some reasonable connection between alleged damage and remedial relief. We submit that for this error alone, even assuming the absence of any other error on the part of the court below, the judgments should be reversed.

VII

The Court Erred in Extending the Restraining Order on November 27th.

The manner in which the court below extended the original temporary restraining order over objection of defend-

ants is further evidence of the enthusiastic compliance by the court with every Government request, no matter how conspicuously contrary to law and how conspicuously contrary to fact. By its terms the original *ex parte* restraining order was to expire at 3:00 P. M., November 27th, after hearing scheduled to begin at 10:00 A. M. on the same day (R. 60). Thereafter, upon the Government's petition, the court issued a rule to show cause why defendants should not be punished for contempt which, too, and in conflict with the temporary restraining order, set the hearing and trial for 10:00 A. M., November 27th (R. 73).

At 10:00 A. M., November 27th, argument commenced on the motion to vacate and discharge the rule, that is, on the issues raised by the contempt proceedings and not on the preliminary injunction. During the course of that argument counsel for the Government requested an extension of the temporary restraining order (R. 158). Thereupon counsel for the defendants raised an objection based upon Rule 65 of the Federal Rules of Civil Procedure (R. 159, 160). It was pointed out to the court that under that rule "the motion for preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character" and that, accordingly, there cannot be "good cause" for extending an *ex parte* order simply because a hearing for contempt of the original order was then in process.

The court below had plainly erred in setting the two hearings for the same day and at the same hour by not giving the required precedence to the motion for the preliminary injunction. If contempt hearings based on violations of *ex parte* orders can thus defer the hearing for the preliminary injunction, then defendants in such cases can be effectively barred from their day in court for indefinite,

elongated periods. That, of course, is precisely why the rule requires that precedence be given to the hearing for preliminary injunctions.

Whatever may be said by way of justifying the court's granting of the Government's request for the extension, it is impossible to comprehend the court's putting its signature to the written order extending the injunction that was subsequently prepared by the Government. The written order contains an incredible misstatement of fact. It opens with the statement: "This cause having come on to be heard on November 27th, 1946, *on plaintiff's motion and prayer for a preliminary injunction*, and it appearing to the court that the hearing will not be completed until after three o'clock P. M., on November 27th, 1946, . . ." (R. 85). (Emphasis supplied.)

On November 27th, the day that order was signed, the hearing, we repeat, was not on plaintiff's motion for a preliminary injunction but on defendants' motion to vacate and discharge the rule—and that was the simple fact that no one could possibly have misunderstood. Indeed, after presenting the court with that written order counsel for the Government, having completed his argument on defendants' motion to vacate, stated, "We request Your Honor that the motion for a temporary injunction . . . be set down for trial before this Court on Friday morning" (R. 186), that being November 29th.

We submit that the order of November 18th expired by its own terms at three o'clock November 27th and that the order attempting to extend it was completely void. Accordingly, even on the assumption that the original order was not repugnant to the Constitution and was not issued in violation of the anti injunction statutes, and even if we assume that the court committed no error in finding defendants guilty of both civil and criminal contempt, and even if we assume that the fines imposed were not excessive and

were supported by competent evidence in the record, it would still be necessary to reverse the judgment of the court below and remand the cause for further hearing. That follows from the fact that the court imposed a fine on the United Mine Workers of America of $250,000 for each day that it allegedly contemned the order of November 18th, and in computing the number of days of alleged contempt the court added the period following 3:00 P. M., November 27th.

Conclusion

It is respectfully submitted, under the authorities cited and discussed in the foregoing arguments that the orders and judgments of the District Court of the United States for the District of Columbia should be reversed.

Respectfully submitted,

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JAMES A. GLENN.

FILE COPY

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1946

Nos. 759, 760

UNITED STATES OF AMERICA,

Petitioner,

vs.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, and JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA,

Respondents.

No. 781

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

No. 782

JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

No. 811

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, and JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

APPENDIX TO BRIEF FOR UNITED MINE WORKERS OF AMERICA AND JOHN L. LEWIS

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72d Congress
1st Session

HOUSE OF REPRESENTATIVES

Report
No. 669

DEFINE AND LIMIT THE JURISDICTION OF COURTS SITTING IN EQUITY

MARCH 2, 1932.—Referred to the House Calendar and ordered to be printed

Mr. LaGuardia, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 5315]

The Committee on the Judiciary, to whom was referred the bill (H. R. 5315) to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes, after hearing (serial 3) and consideration, reports the same favorably with amendments and recommends that the bill as amended do pass.

The committee amendments are as follows:

Page 1, line 7, strike out the word "of" following the word "order" and insert in lieu thereof the word "or".

Page 3, line 3, after the word "enforceable" add the following words "in any court of the United States".

Page 3, line 5, after the word "any" insert the word "such", and in the same line strike out the words "of the United States".

Page 3, line 24, after the word "in" add the words "any case" and strike out the word "cases".

Page 5, line 15, strike out the words "and no association or organization".

Page 5, line 21, strike out the period after the word "thereof" and insert the following words: "and the liability of any such association or organization for unlawful acts of its members shall be similarly limited" followed by a period.

Page 6, line 5, after the word "been" insert the following words: "threatened or".

Page 6, line 6, after the word "restrained" strike out the semicolon and insert the following words: "but no injunction or temporary restraining order shall be issued on

account of any threat or unlawful act except against the person or persons, association or organization making the threat or committing the unlawful act or who actually authorized it or ratified it after actual knowledge thereof" to be followed by a semicolon.

Page 7, line 9, after the word "security" insert the words "in an amount to be fixed by the court",

Page 7, line 21, after the first word "surety" add the following words: "upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice".

Page 9, line 6, after the word "cases" insert the words "arising under this act in which" and strike out the word "where".

Page 9, line 7, strike out the words "indirect" and "for violation of a restrain-".

Page 9, line 8, strike out the words "ing order or injunction issued by" and insert in lieu thereof the word "of".

Page 9, line 12, strike out the word "requirement" and insert in lieu thereof the word "right", and in lines 12 and 13 strike out the words "be construed to".

Page 9, line 19, strike out the words "is authorized to" and insert in lieu thereof the word "may".

Page 9, line 25, strike out the word "provided" and insert in lieu thereof the words "is provided by law" followed by a period.

Page 10, strike out all of line 1 and line 2 down to and including the word "Code".

Page 11, line 11, strike out the word "and" and insert in lieu thereof the word "or" and strike out the words "or concerning".

Page 11, strike out all of line 12 and all of line 13 down to and including the word "employee".

Page 11, line 20, strike out the word "provisions" and insert in lieu thereof the word "part", and strike out, in lines 20 and 21, the words "or the application thereof to any person or circumstances".

Page 11, line 21, after the word "held" insert the words "unconstitutional or otherwise".

Page 11, line 22, strike out the word "remainder" and insert in lieu thereof the words "remaining part", and in

lines 22 and 23 strike out the words "and the application of such provisions to other persons or circumstances".

This bill is the so-called anti-injunction bill. It is the outgrowth of years of agitation in the Congress for restriction upon the powers of Federal equity courts in the issuance of injunctions in labor disputes. Hearings have been held by congressional committees over a period of years and the facts adduced have brought about an almost unanimity of opinion that such powers of the Federal courts have been exercised to the detriment of the public welfare and should be curbed.

The questions are sociologic and economic as well as legal and jurisdictional.

The limitation of the jurisdiction of Federal courts to issue injunctions in labor disputes has been a subject of public discussion for many years. It is fair to say that public sentiment on the subject has reached the conclusion that some such limitation is absolutely necessary. Both of the great political parties in their last national platforms have promised remedial legislation upon the subject. The last Republican National Convention at Kansas City adopted a plank on the subject, as follows:

The party favors freedom in wage contracts, the right of collective bargaining by free and responsible agents of their own choosing, which develops and maintains that purposeful cooperation which gains its chief incentive through voluntary agreement.

We believe that injunctions in labor disputes have in some instances been abused and have given rise to a serious question for legislation.

Following this, the last Democratic National Convention at Houston, Tex., in its platform, made the following promises:

(*a*) We favor the principle of collective bargaining and the Democratic principle that organized labor should choose its own representatives without coercion or interference.

(*b*) Labor is not a commodity. Human rights must be safeguarded. Labor should be exempt from the operation of antitrust laws.

(c) We recognize that legislative and other investigations have shown the existence of grave abuse in the issuance of injunctions in labor disputes. No injunctions should be granted in labor disputes except upon proof of threatened irreparable injury and after notice and hearing, and the injunction should be confined to those acts which do directly threaten irreparable injury. The expressed purpose of representatives of capital, labor, and the bar to devise a plan for the elimination of the present evils with respect to injunctions must be supported and legislation designed to accomplish these ends formulated and passed.

The purpose of the bill is to protect the rights of labor in the same manner the Congress intended when it enacted the Clayton Act, October 15, 1914 (38 Stat. L., 738), which act, by reason of its construction and application by the Federal courts, is ineffectual to accomplish the congressional intent.

Section 1: Section 1 provides that no United States court shall have jurisdiction to issue an injunction in a case growing out of a labor dispute except in strict conformity with the provisions of the act, and further that no such injunction shall be issued contrary to the public policy declared in the act.

The Constitution of the United States in Article III, section 1, provides:

The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish.

The provisions of the bill are expressly limited (sec. 13 (d)) to courts whose jurisdiction has been or may be conferred by the Congress, under the foregoing provision of the Constitution. The Congress having the power to establish, and confer jurisdiction upon, the courts in question, it can not be questioned that it has the power to restrict or curtail the exercise of their powers, as proposed in this bill. The Supreme Court of the United States has clearly recognized that this is the law in Kline *v.* Burke Construction Co. (260 U. S. 226, 234), (1922), wherein the court says that—.

Only the jurisdiction of the Supreme Court is derived directly from the Constitution. Every other court created

by the General Government derives its jurisdiction wholly from the authority of Congress. *That body may give, withhold, or restrict such jurisdiction at its discretion* provided it be not extended beyond the boundaries fixed by the Constitution. (Italics supplied.)

This case involved the jurisdiction of the United States District Court in cases depending upon diverse citizenship; and the Court continued (p. 234) as follows:

The Constitution simply gives to the inferior courts the capacity to take jurisdiction in the enumerated cases, but it requires an act of Congress to confer it. (Nashville v. Cooper, 6 Wall. 247, 252, 18 L. ed. 851, 852.) And the jurisdiction, having been conferred, may, at the will of Congress, be taken away in whole or in part; and, if withdrawn without a saving clause, all pending cases, though cognizable when commenced, must fall.

Concerning the so-called inherent power of the courts to punish for contempt, the following is the state of the law:

The judiciary act of September 24, 1789, creating United States district courts, conferred upon them the power to punish for contempt in the following language:

The said courts shall have power to impose and administer all necessary oaths, and to punish, by fine or imprisonment at the discretion of the court, contempts of their authority.

As early as 1831 the Congress limited this power by the act of March 2, 1831, as follows:

The power of the several courts of the United States to issue attachments and inflict summary punishments for contempts of court shall not be construed to extend to any case except the misbehavior of any person or persons in the presence of the said courts, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of the said courts in their official transactions, and the disobedience or resistance by any officer of the said courts, party, juror, witness or any other person or persons

to any lawful writ, process, order, rule, decree, or command of the said courts (4 Stat. L. 487)—

which is now section 385, title 28, chapter 10, United States Code:

SEC. 385. The said courts shall have power to impose and administer all necessary oaths, and to punish, by fine or imprisonment, at the discretion of the courts, contempts of their authority. Such power to punish contempts shall not be construed to extend to any cases except the misbehavior be construed to etxend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the said courts.

Speaking of the act of March 2, 1831, the Supreme Court, in Ex parte Robinson (19 Wall., 505, 513), said:

But the power has been limited and defined by the act of Congress of March 2, 1831. * * * It limits the power of these courts in this respect to three classes of cases: 1, where there has been misbehavior of a person in the presence of the courts, or so near thereto as to obstruct the administration of justice; 2, where there has been misbehavior of any officer of the courts in his official transactions; and, 3, where there has been disobedience or resistance by any officer, party, juror, witness or other person, to any lawful writ, process, order, rule, decree, or command of the court. As thus seen, the power of these courts in the punishment of contempts can only be exercised to insure order and decorum in their presence, to secure faithfulness on the part of their officers in their official transactions, and to enforce obedience to their lawful orders, judgments, and processes.

Section 21, of the Clayton Act, supra (sec. 386, title 28, U. S. C.) is as follows:

SEC. 21. That any person who shall willfully disobey any lawful writ, process, order, rule, decree, or command of any

district court of the United States or any court of the District of Columbia by doing any act or thing therein, or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States, or under the laws of any State in which the act was committed, shall be proceeded against for his said contempt as hereinafter provided.

Sections 22, 23, and 24 of the Clayton Act (now secs. 387, 388, and 389, title 28, U. S. C.) provide for procedure in cases of contempt and grant to the accused a trial by jury; with the exception of contempts committed in the presence of the court, etc., as stated in section 385, title 28, United States Code, supra.

The Supreme Court reversing the Circuit Court of Appeals for the Sixth Circuit sustained the constitutionality of the provisions of the Clayton Act, now embodied in the United States Code, supra, in the case of Michaelson *v.* U. S. ex rel. C., St. P., M. & O. R. Co. (266 U. S. 42, 69 L. Ed. 162).

This case involved proceedings, under the Clayton Act of October 15, 1914, for contempt of certain striking railroad employes in violating an injunction against picketing, etc., entered in an equity proceeding. Upon answer and return, the defendants applied for a jury trial under section 22 of the Clayton Act; this request was refused and the court proceeded without a jury; defendants were adjudged guilty of contempt and sentenced. The Circuit Court of Appeals affirmed this judgment, and upon writ of certiorari the Supreme Court considered the constitutionality of sections 21 and 22 of the Clayton Act, and held they were constitutional and that the provision for a jury trial in certain specified kinds of contempt was mandatory and not permissive.

In discussing the statute, and the so-called inherent power of courts to punish for contempt, the court said:

It is contended that the statute materially interferes with the inherent power of the courts, and is therefore invalid. That the power to punish for contempts is inherent in all courts has been many times decided and may be regarded as settled law. It is essential to the administration of justice. The courts of the United States, when called into

existence and vested with jurisdiction over any subject, at once become possessed of the power. So far as the inferior Federal courts are concerned however, it is not beyond the authority of Congress; but the attributes which inhere in that power and are inseparable from it can neither be abrogated nor rendered practically inoperative. That it may be regulated within limits not precisely defined may not be doubted. The statute now under review is of the latter character. It is of narrow scope, dealing with the single class where the act or thing constituting the contempt is also a crime in the ordinary sense. It does not interfere with the power to deal summarily with contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, and is, in express terms, carefully limited to the cases of contempt specifically defined. But the simple question presented is whether Congress may require a trial by jury upon the demand of the accused in an independent proceeding at law for a criminal contempt which is also a crime. In criminal contempts, as in criminal cases, the presumption of innocence obtains. Proof of guilt must be beyond reasonable doubt, and the defendant may not be compelled to be a witness against himself. (Gompers *v.* Buck's Stove & Range Co., supra, 221 U. S. 418, 55 L. Ed. 797, p. 444.) The fundamental characteristics of both are the same. Contempts of the kind within the terms of the Statute partake of the nature of crimes in all essential particulars. The only substantial difference between such a proceeding as we have here, and a criminal prosecution by indictment or information, is that in the latter the act complained of is the violation of a law, and, in the former, the violation of a decree. In the case of the latter, the accused has a constitutional right of trial by jury, while in the former he has not. The statutory extension of this constitutional right to a class of contempts which are properly described as "criminal offenses" does not, in our opinion, invade the powers of the courts as intended by the Constitution, or violate that instrument in any other way.

Section 2: Section 2 sets forth the public policy of the United States for the guidance of the courts in their interpretation of this proposed law.

Congress has heretofore declared the public policy of the United States for the guidance of the courts. Previous acts of Congress containing wide declarations of policy may be found in the following statutes: Packers and stockyards act, 1921, Stafford *v.* Wallace (258 U. S. 495); transportation act of 1920, Dayton Goose Creek Ry. Co. *v.* United States (263 U. S. 456; Railway labor act of 1926, T. & N. O. Ry. *v.* Brotherhood of Railway Clerks (281 U. S. 548); grain futures act (title 7, U. S. C., sec. 5 et seq.).

In the Clayton Act (title 29, U. S. C., sec. 52), Congress read into the law the declaration of policy that "The labor of a human being is not a commodity or article of commerce."

This statement of public policy as contained in the bill is in accordance with the general trend of enlightened public opinion and finds adequate support in the opinions of the Supreme Court of the United States. For example, in the case of American Steel Foundries *v.* Tri-City Central Trades Council (257 U. S. 184), the Supreme Court, in an opinion by the late Mr. Chief Justice Taft, uses language of marked similarity with the foregoing statement of public policy, as follows:

Labor unions are recognized by the Clayton Act as legal when instituted for mutual help and lawfully carrying out their legitimate objects. They have long been thus recognized by the courts. They were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers an opportunity to deal on equality with their employer. They united to exert influence upon him and to leave him in a body, in order, by this inconvenience, to induce him to make better terms with him. They were withholding their labor of economic value to make him pay what they thought it was worth. The right to combine for such a lawful purpose has, in many years, not been denied by any court. The strike became a lawful in-

strument in a lawful economic struggle or competition between employer and employees as to the share or division between them of the joint product of labor and capital. To render this combination at all effective, employees must make their combination extend beyond one shop. It is helpful to have as many as may be in the same trade in the same community united, because, in the competition between employers, they are bound to be affected by the standard of wages of their trade in the neighborhood.

The inclusion of a statement of public policy in the act itself is unobjectionable. It tends to remove doubt as to the purpose and intention of the Congress and is thereby of assistance to the courts in determining questions of interpretation. Moreover, it is the place to look for a statement of the public policy involved, because, as said by the Supreme Court, the public policy of a State must be ascertained from its laws. (Vidal *v.* Girard, 2 Howard 127; License Tax Cases, 5 Wall. 462; St. Louis Mining & M. Co. *v.* Montana Mining Co., 171 U. S. 650.)

Furthermore, the Congress has heretofore stated in legislation the public policy in similar manner. For example, as late as 1925 the Congress declared by statute what should be the true policy in rate making to be pursued by the Interstate Commerce Commission, to the effect that conditions which at any given time prevail in our several industries should be considered in so far as it is legally possible so to do, to the end that commodities may freely move (43 Stat. L., 80).

Section 3: Section 3 is designed to outlaw the so-called yellow-dog contract. This section provides that any promise which is described therein or which conflicts with the public policy declared in section 2, is contrary to public policy and shall be unenforceable in any court of the United States. This section includes specifically a promise contained in any agreement of hiring whereby either party promises not to joint a labor organization or employer organization, or promises to withdraw from an employment relation in the event he joins any such organization.

This section in no wise is concerned with interstate commerce or the application of the Sherman Act and its amend-

ments, but the Federal courts obtain jurisdiction in cases involving such contracts by virtue of diversity of citizenship; and injunctions have been issued in the Federal courts on the basis of such contracts of employment.

It is easy to say that an employee is not compelled to accept employment and that an employer has the right to make such conditions as he may see fit surrounding the employment. But, aside from the necessity of providing support for himself and family always immediately confronting the workingman, and always materially diminishing his freedom of contract, the vice of such contracts, which are becoming alarmingly widespread, is that if they are carried to their ultimate conclusion, they would abolish trade-unionism. Indeed that is undoubtedly their purpose, and the purpose of the organizations of employers opposing this bill. With this prospect in immediate view, upon the general adoption of the "yellow-dog" contract, the employee, as stated by the late Mr. Chief Justice Taft in the American Steel Foundries *v.* Tri-City C. C. case, supra, becomes "helpless in dealing with an employer"; and the "union," stated by the same authority as "essential to give laborers an opportunity to deal on equality with their employer," becomes a thing of the past.

Also, as stated in a more recent decision of the Supreme Court of the United States in the case of Texas & N. O. Railroad Co. *v.* Brotherhood of Railway and Steamship Clerks et al. (281 U. S. 548), the opinion being written by Mr. Chief Justice Hughes, "collective action would be a mockery," because collective action would be impossible so far as the employee is concerned by virtue of the necessity of signing the character of contract condemned, which prevents a man from joining with his fellows for collective action; and the statement contained in the same decision that "it has long been recognized that employees are entitled to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates of pay and conditions of work" would become an empty statement of historical fact.

Section 4: Section 4 provides that no United States court shall have jurisdiction to issue any injunction in any

case involving a labor dispute to prohibit any person participating in such dispute from doing, whether singly or in concert, certain acts. These acts, briefly stated, which can not be enjoined, are the acts of ceasing to work, of becoming a member of a labor or employer organization, of paying any strike benefit, of aiding by lawful means persons participating in a labor dispute who are being proceeded against in a suit, of giving publicity to the facts involved in a labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence, of assembling peaceably to act in promotion of the interests involved in a labor dispute, of advising any person of any intention to do any of these acts, of agreeing with other persons to do or not to do any of these acts, and of advising or urging without fraud or violence any of these acts regardless of any promise described in section 3 as hereinabove discussed.

These are the same character of acts which Congress in section 20 of the Clayton Act of October 15, 1914, sought to restrict from the operation of injunctions, but because of the interpretations placed by the courts on this section of the Clayton Act, the restrictions as contained therein have become more or less valueless to labor, and this section is intended by more specific language to overcome the qualifying effects of the decisions of the courts in this respect.

As an example of the manner in which the courts have interpreted this section of the Clayton Act which is responsible in part for this agitation for further legislation, we beg leave to cite the following cases.

In the case of Duplex Printing Press Co. *v.* Deering (254 U. S. 443), decided January 3, 1921, and being a six to three decision, the court held so far as pertinent to this particular discussion that this section of the Clayton Act provided a restriction upon the use of the injunctions in favor only of the immediate disputants and that other members of the union not standing in the proximate relation of employee and employee could be enjoined. Of course, it is fundamental that a strike is generally an idle gesture if confined only to the immediate disputants. This is intended to be remedied by the later provision in this act defining the meaning of the term, "persons participating in a labor dispute," as

to whom, as in the bill defined, the courts are deprived of jurisdiction to issue injunctions in the specified instances set forth in this section.

In the case of the American Steel Foundries Co. *v.* Tri-City Central Trades Council, supra, there was a strike, and, of course, a picket line. There was practically no fraud or violence but the persistent giving of publicity to the facts involved in the dispute and the persistent advising of other persons without fraud or violence not to work for the employer. It was thought by the labor union that section 20 prohibited an injunction against such acts, but the Supreme Court held that such acts could be enjoined, and, therefore, the legislation proposed specifically restricts the courts in this respect unless the acts are accompanied by fraud or violence.

Section 5: This section provides that no United States court shall have jurisdiction to issue an injunction upon the ground that the persons participating in a labor dispute are engaging in an unlawful combination because of the doing in concert of the acts enumerated in section 4.

This section is included principally because many of the objectionable injunctions have been issued under the provisions of the anti-trust laws, a necessary prerequisite for invoking the jurisdiction of which is a finding of the existence of a conspiracy or combination and without which no injunction could have been issued. For example, in the case of Bedford Cut Stone Co. *v.* Journeymen Stone Cutters' Association (274 U. S. 37) a 7 to 2 decision, where there was simply a rule by the association forbidding the members from working on the "unfair" stone of the complainant, the Supreme Court held that while it was lawful for members independently to refuse to work, when they refused in concert, it became a combination, and when this unreasonably interfered with interstate commerce, it could be enjoined under the antitrust laws, resulting in the members being enjoined from refusing to work.

Section 6: Section 6 provides that no employee of any organization and no organization participating in a labor dispute shall be held liable for the unlawful acts of individual members, except upon clear proof of actual authorization of such acts. This section speaks for itself and is

desirable because both individuals and associations have been held liable for unlawful acts of overzealous members which acts were neither authorized nor ratified by the officer or association and were entirely without the scope of any authority committed by the officer or association of the offending member.

This provision does not affect the general law of agency, and it is necessary, under the circumstances, that the courts should know that Congress expects them not to hold officers or associations liable for the unlawful acts of a member without clear proof of actual participation in, or authorization of, any unlawful acts by the officer or association.

Section 7: This section is largely procedural and restrictive in character. The fairness of this section can not reasonably be disputed. It simply provides that no court shall have jurisdiction to issue an injunction in cases growing out of a labor dispute except after hearing the testimony of witnesses in open court with an opportunity for cross-examination and except after findings of fact by the court that unlawful acts have been committed and will be continued unless restrained, that irreparable injury to the complainant's property will follow, that as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief, that complainant has no adequate remedy at law, and that the public officers charged with the duty of protecting complainant's property are unable or unwilling to furnish adequate protection.

As will be noted, this is to prevent courts from issuing injunctions without making a finding of facts or where the unlawful acts are only threatened and where no substantial injury will follow, or where the injury always done by granting the relief is outweighed by the injury which would be inflicted by the denial of the relief, or where the public officers fail in their duty. The last provision is considered desirable, because it often happens that complainants rush into a Federal court and obtain an injunction the enforcement of which requires the court to consider and punish acts which are and ought to be, under our system of government, cognizable in the local tribunals. Our Federal courts

already are congested with cases ordinarily cognizable in the local police courts, for example, the multitude of cases growing out of the prohibition act; and the granting of injunctions in many cases results in further congestion because the Federal courts are required to punish as contempts acts which are clearly local police-court matters.

The other provisions of this section hardly require any particular discussion, because they relate to the giving of notice, the length of time that a temporary restraining order shall be effective, the necessity for giving an undertaking with surety, the recompense for damages caused by the erroneous issuance of injunctions, and the like; all of which are generally considered necessary and reasonable when the extraordinary injunctive arm of the court is brought into play with the serious consequences of injury which the improvident issuance of an injunction frequently produces.

Section 8: This section prohibits any injunctive relief where the parties have failed to make every reasonable effort to settle, or have failed to comply with any obligation imposed by law, or have failed to invoke the aid of any available governmental machinery for mediation. There can be no reasonable objection to this section because it is universally believed that disputes should be settled without resort to courts wherever possible, and the settlement of disputes by conciliation and arbitration, instead of by strikes, has become the rule rather than the exception.

Section 9: This section provides for findings of fact by the court which must be filed in the record of the case prior to the issuance of any injunctive order, and also provides that every injunctive order growing out of a labor dispute shall include only a prohibition of such specific acts as are expressly complained of and expressly included in the findings of fact made and filed by the court. This section is designed to require the court to find as a fact the existence of the acts enjoined and to prevent the enjoining of acts which are not complained of—clearly a deterrent to prevent the very harsh inclusive injunctive orders which are sometimes encountered and which go, by the embracive character of the decree, beyond allegations of the complaint or the

facts adduced. This is clearly a reasonable restriction and unobjectionable.

Section 10: Section 10 provides for a speedy appeal, which is highly desirable in view of the extremely important issues which disputes of this kind involve. This section also gives these cases precedence in the appellate courts, and contains a provision somewhat similar to the provision of the statute in relation to the orders of the Interstate Commerce Commission, wherein it is provided that such proceedings shall be given precedence over all cases pending therein and shall be in every way expedited. (Sec. 21, title 15, U. S. C.)

Section 11: Section 11 provides that in cases in which a person shall be charged with contempt for violating injunctive orders the accused shall enjoy the right to a speedy and public trial by a jury and also provides that this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice, etc. That Congress has authority to provide for such a trial by jury has been upheld by the Supreme Court of the United States in the case of Michaelson *v.* U. S. ex rel. Chicago, St. Paul, Milwaukee & Omaha Railway Co. (266 U. S. 42), wherein the Supreme Court upheld a similar provision contained in section 21 of the Clayton Act.

Section 12: Section 12 provides that the defendant in any contempt proceeding may file with the court a demand for the retirement of the judge, if the contempt arises from an attack upon the conduct of said judge, and occurred other than in the presence of the court or so near thereto as to interfere directly with the administration of justice, and that upon filing of any such demand the judge is compelled to proceed no further. This is desirable because in some instances the presiding judges have had such pronounced views in labor disputes as to make impossible a fair and impartial hearing.

Section 13: Section 13 contains definitions which speak for themselves. It is hardly necessary to discuss them other than to say that these definitions include, as herein-

above stated, a definition of a person participating in a labor dispute which is broad enough to include others than the immediate disputants and thereby corrects the law as announced in the case of Duplex Printing Press Co. *v.* Deering, supra, wherein the Supreme Court reversed the circuit court of appeals and held that the inhibition of section 20 of the Clayton Act only related to those occupying the position of employer or employee and no others. The Supreme Court held to the same effect in the case of the American Steel Foundries Co. *v.* Tri-City Central Trades Council, supra.

The definitions also, as above stated, limit the act to courts of the United States whose jurisdiction has been conferred or limited by act of Congress; that is to say, the inferior Federal courts.

Section 14: Section 14 is the usual provision to the effect that if any provision is held to be unconstitutional the remaining provisions shall not be affected thereby.

Section 15: Section 15 is the usual provision repealing acts in conflict with the provisions of this act.

States Having Enacted Anti-Injunction Legislation

In the following States legislation has been enacted governing the so-called "ani-injunction laws": Illinois, Kansas, Minnesota, Montana, New Jersey, North Dakota, Oregon, Pennsylvania, Utah, Washington, and Wisconsin.

In four of the States (Kansas, Minnesota, Pennsylvania, and Wisconsin) the law specifically provides that no injunction shall be issued without previous notice and an opportunity to be heard in open court. The State of Wisconsin, by chapter 376 of the acts of 1931, enacted a law defining the public policy of the State relative to collective bargaining. This act creates a new section relating to litigation growing out of the labor disputes and limiting the jurisdiction of courts sitting in equity. Section 268.23 concerns the conditions of issuance of injunctions and restraining orders. This section provides that no court shall have jurisdiction to issue an injunction in any case involving a labor dispute except after the testimony of witnesses in open court and with an opportunity for cross-examination.

On October 15, 1914, the Congress of the United States enacted the Clayton Act. Prior to the enactment of this law, several States had already enacted provisions similar to those contained in section 20 of the Clayton Act. The following States have similar provisions: North Dakota, Oregon, Utah, Washington, and Wisconsin.

In addition to the above States which have enacted laws restricting the use of injunctions three other States (Illinois, Montana, and New Jersey) have enacted laws, although similar in many respects to the Clayton Act, differ in the exact wording of the law. (Credit for the research of State statutes on the subject is due the Bureau of Labor Statistics of the United States Department of Labor.)

In conclusion, it is repeated that the proposed bill is designed primarily as a practical means of remedying existing evils, and limitations are imposed upon the courts in that class of cases wherein these evils have grown up and become intolerable. This is a reasonable exercise of legislative power, and in order that the limitation may not be whittled away by refined definitions of what persons are to be regarded as legitimately involved in labor disputes, the bill undertakes specifically to designate those persons who are entitled to invoke the protections of the procedure required.

Appendix

Many Members of the House who are lawyers have given this subject a great deal of consideration, and have expressed their interest in the question of the power of Congress over equity jurisdiction of the Federal courts. A very interesting and scholarly memorandum was prepared on this subject by Prof. Felix Frankfurter, of the Harvard Law School, and coauthor of a recognized and authoritative work The Labor Injunction (Frankfurter & Greene, 1930), in which members will find not only the historical background but an abundance of judicial precedents and decisions on the subject.

Power of Congress Over Equity Jurisdiction of the Federal Courts

Congressional power over Federal equity jurisdiction is an aspect of Federal legislative power over the Federal judiciary generally. Accordingly this memorandum will treat the broader question first. But since it may be true in the law, if not elsewhere, that the whole does not always include its parts, consideration will then be given to the question whether there is anything in the nature of Federal equity jurisdiction which clothes it with special immunities.

A. Congressional power over the Federal courts generally.—The provisions of Article III, section 2 of the Constitution, defining the scope of "the judicial power," are not self-executing. Section 1 of the same article provides:

> The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.

The extent to which the judicial power shall be vested in such inferior courts rests with Congress, which brought them into being. There has never been a time when the full limit of Federal judicial power has been given to the lower Federal courts. Not until 1875, except for the 1-year existence of the act of 1801, were the courts given jurisdiction over "cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties * * *" (18 Stat. 470; U. S. Comp. Stat. (1916) sec. 991 *et seq.*). Jurisdiction based on diversity of citizenship existed from the beginning, subject, however, to certain limitations, such as the necessary amount in controversy and the prohibition against suit by an assignee where the assignor could not have availed himself of Federal jurisdiction. The act of 1887-88 limited the privilege of removal to nonresident defendants, regardless of the existence of diversity of citizenship in other cases (24 Stat. 552; 25 Stat. 433; U. S. Comp. Stat. (1916) secs. 991 (1), 2954-58). These are simply major landmarks in the delimitation by Congress of the scope of judicial power. A full collection of statutes by which Congress exercised authority over the establishment, jurisdiction, powers, and procedure of the Federal courts

is contained in Frankfurter and Landis' Power of Congress over Procedure in Criminal Contempts in Inferior Federal Courts—A Study in Separation of Power (1924), (37 Harvard Law Rev. 1010, 1059, 1100).

Judicial recognition of this authority has been expressed from the time of Chief Justice Ellsworth to our day. The following, arranged chronologically, are typical:

Ellsworth, C. J., in Turner *v.* Bank (4 Dall. 8 (1799)): "A circuit court, however, is of *limited* jurisdiction, and has cognizance, not of cases generally, but only of a few special circumstances, amounting to a small proportion of the cases, which an unlimited jurisdiction would embrace."

Daniel, J., in Cary *v.* Curtis (3 How. 236, 245 (1845) (upholding statute forbidding action against collector to recover duties paid under protest): "Secondly, in the doctrine so often ruled in this court, that the judicial power of the United States, although it has its origin in the Constitution, is (except in enumerated instances, applicable exclusively to this court) dependent for its distribution and organization, and for the modes of its exercise, entirely upon the action of Congress, who possess the sole power of creating the tribunals (inferior to the Supreme Court) for the exercise of the judicial power, and of investing them with jurisdiction, either limited, concurrent, or exclusive, and of withholding jurisdiction from them in the exact degress and character which to Congress may seem proper for the public good * * *. The existence of the judicial act itself, with its several supplements, furnishes proof unanswerable on this point. The courts of the United States are all limited in their nature and constitution, and have not the powers inherent in courts existing by prescription or by the common law."

Grier, J., in Sheldon *v.* Sill (8 How. 441, 449 (1850)) (upholding assignee clause of judiciary act): "The Constitution has defined the limits of the judicial power of the United States, but has not prescribed how much of it shall be exercised by the circuit court; consequently, the statute which does prescribe the limits of their jurisdiction, can not be in conflict with the Constitution, unless it confers powers not enumerated therein."

Swayne, J., in Mayor *v.* Cooper (6 Wall. 247, 252 (1867)) (upholding statute allowing removal in single class of cases involving law of Congress): "As regards all courts of the United States inferior to this tribunal, two things are necessary to create jurisdiction, whether original or appellate. The Constitution must have given to the court the capacity to take it, and an act of Congress must have given to the court the capacity to take it, and an act of Congress must have supplied it."

Field, J., in Ex parte Robinson (19 Wall. 505, 510-511 (1873)) (upholding statute limiting summary power to punish for contempt): "The moment the courts of the United States were called into existence and invested with jurisdiction over any subject, they became possessed of this power (to punish for contempt). But the power has been limited and defined by the act of Congress of March 2, 1831. The act, in terms, applies to all courts; whether it can be held to limit the authority of the Supreme Court, which derives its existence and powers from the Constitution, may perhaps be a matter of doubt. But that it applies to the circuit and district courts there can be no question. These courts were created by act of Congress. Their powers and duties depend upon the act calling them into existence, or subsequent acts extending or limiting their jurisdiction."

Miller, J., in United States *v.* Union Pac. R. R. (98 U. S. 569, 603): "We say therefore, that, with the exception of the Supreme Court the authority of Congress, in creating courts and conferring on them all or much or little of the judicial power of the United States, is unlimited by the Constitution."

Fuller, C. J., in Ex parte Wisner (203 U. S. 449, 455): "The Supreme Court alone possesses jurisdiction derived immediately from the Constitution, and of which the legislative power can not deprive it * * * ; but the jurisdiction of the circuit courts depends upon some act of Congress."

Sutherland, J., in Kline *v.* Burke Const. Co. (260 U. S. 226, 233-34 (1922)): "The right of a litigant to maintain an action in a Federal court on the ground that there is a controversy between citizens of different States is not

one derived from the Constitution, unless in a very indirect sense. Certainly it is not a right granted by the Constitution. The applicable provisions, so far as necessary to be quoted here, are contained in Article III * * * The effect of these provisions is not to vest jurisdiction in the inferior courts over the designated cases and controversies but to delimit those in respect of which Congress may confer jurisdiction upon such courts as it creates * * * That body may give, withhold, or restrict such jurisdiction at its discretion, provided it be not extended beyond the boundaries fixed by the Constitution * * * And the jurisdiction having been conferred may, at the will of Congress, be taken away in whole or in part. * * *"

Taft, C. J., in Myers *v.* United States (272 U. S. 52, 129-30 (1926)) (on a suggested analogy between the power of Congress over lower Federal courts and over removal of inferior officers): "By the second section of article 3 the judicial power is extended to all cases in law and equity under this Constitution and to a substantial number of other classes of cases. Under the accepted construction the cases mentioned in this section are treated as a description and reservoir of the judicial power of the United States and a boundary of that power as between the United States and the States, and the field of jurisdiction within the limits of which Congress may vest particular jurisdiction in any one inferior Federal court which it may constitute."

Against this current of authority can be set only certain statements of Story, J., bred of his militant federalism. Thus, in Martin *v.* Hunter's Lessee (1 Wheat. 304, 330 (1816)), he said:

If, then, it is a duty of Congress to vest the judicial power of the United States, it is a duty of Congress to vest the whole judicial power.

But this was simply a statement of personal views; at page 337 of the case he recognizes that the decision need not be placed on any such iconoclastic ground. For other expressions of Story's political philosophy see 1 Story, Life and Letters of Joseph Story (1851) 293. Compare also his insistence that the power of Congress over inter-

state commerce was "exclusive," another facet of his federalist philosophy. Dissenting in Mayor *v.* Miln (11 Pet. 102 (1837)). Story's opinion is a maverick in the judicial fold.

Nowhere has the matter been more succinctly put than in an address of the late Chief Justice Taft before the American Bar Association in 1922:

> But of course the taking away of fundamental jurisdiction from the Federal courts is within the power of Congress and it is not for me to discuss such a legislative policy (47 Rep. A. B. A. (1922) 250, 259).

B. Power of Congress over Federal equity jurisdiction.—Apart from the seventh amendment, probably no question would arise of the power to affect equity jurisdiction is like that existing in England in 1789. (See e. g., Boyle *v.* Zacharie, 6 Pet. 648, 658 (1832); Payne *v.* Hook, 7 Wall. 425, 430 (1868); McConihay *v.* Wright, 121 U. S. 201, 206 (1887).) These statements, however, must be read in the light of the problem to which they were addressed. They express the formula by which a uniform equity jurisdiction was established for the Federal courts despite the great divergences in the practice of the States at the time of the Constitution. Of the 13 States, 5 had separate courts of chancery, 3 had no chancery courts, but certain equity powers were given to the common-law courts, 2 had common-law courts with a very few limited equity powers, 1 had only common-law courts, and in 2 the legislature exercised some chancery powers. (See The Federalist, No. 83; Warren, New Light on the History of the Judiciary Act (1923), 37 Harvard Law Rev. 49, 96-101.) It is to express the independence of Federal equity from that of the States, not from congressional control, that the formula has been used. The cases in which it has been employed all involved the effect of State relaxation of the dichotomy of law and equity. It is frequently said that the States can neither enlarge nor diminish the equity jurisdiction of the Federal courts, e. g., Cates *v.* Allen (149 U. S. 451); Mississippi Mills *v.* Cohen (150 U. S. 202). Yet even here growth and change have been possible, for it is held that a new "right" created in equity by a

State, as distinguished from a new equitable remedy, will be enforced in the Federal courts. (See a recent discussion of this question in Henrietta Mills *v.* Rutherford County, 281 U. S. 121 (1930).)

Even in these cases dealing with State practice, the Supreme Court has often been careful to advert to the part which Congress plays in shaping Federal equity jurisdiction. See, for example, the following:

Marshall, C. J., in United States *v.* Howland (4 Wheat. 106 (1819) at p. 115): "* * * and as the courts of the union have a chancery jurisdiction in every State, and the judiciary act confers the same chancery powers on all, and gives the same rule of decision, its jurisdiction in Massachusetts must be the same as in other States."

Curtis, J., in Neves *v.* Scott (13 How. 268, 272 (1851)): "But in all the States the equity law, recognized by the Constitution and by acts of Congress, and modified by the latter, is administered by the courts of the United States, and upon appeal by this court."

Perhaps the most suggestive characterization of the relation of the practice of the high court of chancery to Federal equity practice is contained in a statement of McLean, J., in Pennsylvania *v.* Wheeling Bridge Co. (13 How. 518, 563 (1851)):

This may be said to be the common law of chancery, and since the organization of the Government it has been observed.

Indeed, on at least one occasion the court felt constrained to point out that there was a body of principles of equity apart from laws of Congress:

It is a mistake to suppose that for the determination of equities and equitable rights we must look only to the statutes of Congress. The principles of equity exist independently of and anterior to all Congressional legislation, and the statutes are either annunciations of those principles or limitations upon their application in particular cases. (Brewer, J., in United States *v.* Detroit Lumber Co., 200 U. S. 321, 339 (1906).)

But reliance need not be had on general statements. Congress has actually affected the scope of equity jurisdiction. In 1911 an important step was taken in the direction of a union of law and equity, by virtue of the statute allowing equitable defenses to be pleaded in an action at law, and equitable relief to be sought by way of answer to an action at law. (Judicial Code, sec. 274b, 38 Stat. 956; 28 U. S. C., sec. 398). Discussing this provision in an address referred to above, Chief Justice Taft said:

Already under the Federal code, there is a statutory provision which has not yet been much considered by the courts, by which an equitable defense may be pleaded to a suit at law. If we may go so far, it is a little difficult to see why the distinction between the two courts may not be wholly abolished, and the constitutional right of trial by jury retained unaffected (47 Rep. A. B. A. (1922) 250, 260).

Three months later the Chief Justice had occasion to echo these remarks in the course of an opinion:

Section 274b is an important step toward a consolidation of the Federal courts of law and equity, and the questions presented in this union are to be solved much as they have been under the State codes. (Liberty Oil Co. *v.* Condon Bank, 260 U. S. 235 (1922).)

More particular instances are at hand. Since 1793 Congress has prohibited the granting of an injunction to stay proceedings in any court of a State, except in bankruptcy. (1 Stat. 334 (1793); 36 Stat. 1162 (1911); 28 U. S. C., sec. 379; Judicial Code, sec. 265.) Since 1867 Congress has forbidden suits to restrain the assessment or collection of any tax. (14 Stat. 475; 26 U. S. C., sec. 154.) This provision was recently extended to include transferees of a taxpayer. (45 Stat. 873 (1928), 26 U. S. C., sec. 2604, upheld in Phillips *v.* Commissioner, 283 U. S. 589 (1931).)

A related question was presented by sections 21 and 22 of the Clayton Act, requiring a jury trial in certain classes of contempts. During the course of the debates in the House, John W. Davis, then a Member from West Virginia, summarily dealt with the question:

It has been hinted, not argued, that this measure goes beyond the constitutional power of Congress as to the courts * * *. I must content myself with a mere quotation again from the Supreme Court of the United States in the case of In re Robinson (19 Wall. 505), having reference to the power to punish for contempt. * * * (See quotation on p. 3, supra; 48 Cong. Rec., pt. 7, p. 6441 (1912).)

The provision was upheld in Michaelson *v.* United States (266 U. S. 42 (1924)). Certain statements of Mr. Justice Sutherland in that case call for a word of comment. Superficially they seem to run counter to the current of authority already cited, e. g., the dictum that "If the statute now under review encroaches upon the equity jurisdiction intended by the Constitution, a grave constitutional question in respect of its validity would be presented; * * *." How the intent of the Constitution is to be determined is not stated. But the whole context indicates that the difficulty present to the mind of Mr. Justice Sutherland was that Congress might deprive the court of powers necessary to its proper functioning. This is the statement of the result of the case by the late Judge Rose of the fourth circuit:

As all the inferior Federal courts are the creatures of Congress, the latter has the right to restrict their jurisdiction over contempts as well as over other matters, provided it leaves them still able to function as courts.

If the dictum of Mr. Justice Sutherland means more than this, it can hardly be reconciled with the views expressed by Chief Justice Taft. Judge Rose's view is found in his Federal Jurisdiction and Procedure (1926 ed., p. 35.)

Indeed, real limits on congressional power do derive from the traditional ideas of the proper functions of a court. Independence of judgment must not be interfered with; thus Congress may not, under the guise of a jurisdictional rule, prescribe an arbitrary rule of decision on the merits. (United States *v.* Klein, 13 Wall. 128 (1871).) Nor may Congress place finality of judgment in the executive department after a decision by the courts. (Gordon *v.*

United States, 117 U. S. 697 (1864).) Nor may courts be given the duty of passing upon matters which other branches of the Government are peculiarly adapted to decide. (Oetjen *v.* Central Leather Co., 246 U. S. 297 (1918) (recognition of foreign government), Keller *v.* Potomac Electric Power Co., 261 U. S. 428 (1923) (rate fixing).) These are the types of cases in which the power of Congress over the judiciary has been successfully controverted.

C. Conclusion.—The power of Congress over the equity powers of the lower Federal courts is implied in congressional power over these courts generally, as exercised in the whole series of judiciary acts, and as recognized by a continuous current of judicial authority. The immunity of Federal equity powers to change is a doctrine for the preservation of uniformity and is directed at the effects of varying State practice; even here, however, some inroads have been made where the State law creates a new "right." The authority of Congress to establish a union of law and equity, preversing the right to jury trial where proper, has been recognized by high authority. Congress has prohibited injunctive relief in certain classes of cases. The acts of Congress which have been held unconstitutional, dealing with judicial powers, have violated the traditional canons of judicial functions. No act of Congress has been held unconstitutional on the ground that it interfered with Federal equity powers. For Congress itself to hesitate on this ground would seem to be a paradoxical bit of self-abnegation.

CALENDAR No. 176

72d Congress
1st Session

SENATE

Report
No. 163

TO DEFINE AND LIMIT THE JURISDICTION OF COURTS SITTING IN EQUITY

February 4, 1932.—Ordered to be printed

Mr. Norris, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 935]

The Committee on the Judiciary, to which was referred the bill (S. 935) to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes, having had the same under consideration, beg leave to report as follows:

We recommend that the bill be amended as hereinafter set forth, and, as so amended, that the bill be passed.

The following amendments are recommended:

1. On page 2, line 10, after the word "wherefore", insert the following: "though he should be free to decline to associate with his fellows".

2. On page 3, line 1, after the word "enforceable", insert the words "in any court of the United States".

3. On page 3, line 3, after the word "any", insert the word "such".

4. On page 3, line 3, after the word "court", strike out the words "of the United States".

5. On page 3, line 2, strike out the word "cases" and insert, in lieu thereof, the words "any case".

6. On page 8, line 25, after the word "proceedings", insert the words "and on his filing the usual bond for costs".

7. On page 9, line 1, after the word "certify", insert the words "as in ordinary cases".

8. On page 9, line 1, strike out the word "entire".

9. On page 9, line 1, after the word "case", strike out the words "including a transcript of the evidence taken".

10. On page 9, line 9, strike out the word "where" and insert, in lieu thereof, the words "in which".

11. On page 9, line 10, strike out the words "indirect criminal".

12. On page 9, line 15, strike out the word "requirement" and insert, in lieu thereof, the word "right".

13. On page 9, line 15, after the world "not", strike out the words "be construed to".

14. On page 9, line 22, after the word "court", where it first appears in said line, strike out the words "is authorized to" and insert, in lieu thereof, the word "may".

15. On page 10, line 1, after the word "the", strike out the word "attack" and insert, in lieu thereof, the word "contempt".

16. On page 10, line 1, after the word "occurred", strike out the word "otherwise" and insert, in lieu thereof, the word "elsewhere".

17. On page 10, line 2, strike out the words "open court" and insert in lieu thereof the words "the presence of the court or so near thereto as to interfere directly with the administration of justice".

18. On page 10, line 4, after the word "as", insert the word "is".

19. On page 10, line 4, after the word "provided", strike out down to and including the word "Code" in line 6, and insert in lieu thereof the words "by law".

20. On page 11, line 15, strike out the word "and" and insert in lieu thereof the word "or".

21. On page 11, line 24, after the word "any", strike out the word "provisions" and insert in lieu thereof the word "provision".

22. On page 11, line 24, after the word "act", strike out down to and including the word "circumstance" in line 25.

23. On page 11, line 25, after the word "held", insert the words "unconstitutional or otherwise".

24. On page 12, line 1, after the word "the" where it first appears in said line, strike out the word "remainder" and in lieu thereof insert the words "remaining provisions".

25. On page 12, line 1, after the word "act", strike out down to and including the word "circumstances" in line 2, page 12.

The Committee on the Judiciary has been considering the subject of injunctions in labor disputes for several years, and this bill is a result of such study and consideration.

In the Seventieth Congress, on December 12, 1927, the Senator from Minnesota, Mr. Shipstead, introduced a bill on the subject (S. 1482). From that time to the present the Judiciary Committee, in one form or another, has had under consideration the question of limiting the jurisdiction of Federal courts in granting injunctions in labor disputes.

In the Seventieth Congress the bill referred to (S. 1482) was referred to a subcommittee consisting of the Senator from Wisconsin, Mr. Blaine; the Senator from Montana, Mr. Walsh; and the writer. This subcommittee held extensive and unlimited public hearings upon the bill. No limit was placed upon the hearings, and those who favored the legislation and those who were opposed to the legislation were heard without limitation.

At the close of the hearings this subcommittee, in executive session, went over the hearings and discussed all phases of the proposed legislation. The subcommittee was

unanimous in reaching the conclusion that some legislation on this subject was absolutely necessary in the public interest; but it likewise reached the conclusion that the bill under consideration did not fully meet the requirements.

After further consideration this subcommittee called into consultation economists and attorneys who had made a special study of this particular subject. They invited Prof. Felix Frankfurter, of the law school of Harvard University, Cambridge, Mass.; Herman Oliphant, former professor of law at Columbia University, now a member of the faculty of the institute of law, the Johns Hopkins University, Baltimore, Md.; Prof. Francis B. Sayre, law school of Harvard University, Cambridge, Mass.; Mr. Edwin E. Witte, chief of the legislative reference library, Madison, Wis.; and Hon. Donald R. Richberg, attorney, of Chicago, Ill., to meet with the subcommittee for the purpose of giving further consideration to the subject and drafting proper legislation. As a result of such consultation and deliberation, the subcommittee prepared a substitute bill which, in its essential and material particulars, is practically the same as the bill now reported to the Senate (S. 935).

The subcommittee reported this substitute to the full Committee on the Judiciary. After this report was made and after considerable consideration by the full Committee, various attorneys representing interests opposed to the enactment of the proposed bill requested further hearings upon the substitute bill recommended by the subcommittee.

The Committee on the Judiciary, after considerable discussion, thereupon referred the entire matter back to the subcommittee, with instructions to hold further hearings upon the proposed substitute. In accordance with these directions, the subcommittee again held public hearings and gave to all persons who so desired an opportunity to be heard. At the close of the hearings, the subcommittee again reported the bill to the full committee, with the recommendation that the substitute be agreed to and that the bill, as thus amended, be favorably reported to the Senate.

The proposed bill was the subject of consideration and discussion in the full committee for several weeks, but no final action was taken by the full committee during that session of the Seventieth Congress. At the second or short session of the Seventieth Congress, the bill was again taken up by the full committee, but no conclusion was reached and at the final adjournment of the Congress the bill died upon the calendar of the committee without any action thereon.

At the beginning of the regular session of the Seventy-first Congress, on the 9th day of December, 1929, the Senator from Minnesota, Mr. Shipstead, again introduced his bill, this time known as S. 2497, which bill was in practically the same form as the bill, S. 1482, of the Seventieth Congress.

The Judiciary Committee referred the bill to the same subcommittee which had handled the matter in the Seventieth Congress. This subcommittee, having given such extensive hearings and consideration to the bill in the Seventieth Congress, did not feel that additional hearings were necessary. Nevertheless, upon application of attorneys representing corporations and organizations opposed to the enactment of this kind of legislation, limited hearings were again held and all interested parties were permitted to file written briefs.

The subcommittee, after giving further consideration to the subject, and after making several amendments to the substitute bill previously prepared by the subcommittee, again reported the bill to the full committee with the recommendation that the amended substitute be agreed to and that the bill, as thus amended, be favorably reported to the Senate.

After further consideration by the full committee upon the report of the subcommittee, the substitute proposed by the subcommittee was amended by the full committee in several respects, but, upon motion to report the bill to the Senate as amended by the proposed subcommittee substitue, with a recommendation that as thus amended the bill be passed, 7 members of the committee voted in favor of such report and 7 members voted against making the re-

port (3 members not voting). Thus the motion to make a favorable report was defeated.

The proposed substitute bill, however, was again further considered by the full committee and, as a result thereof, by a majority vote of the committee, the proposed bill was submitted to the Attorney General with the request that he indicate to the committee his views concerning the constitutionality of the proposed legislation and also as to the effect the enactment of such legislation would have upon the United States in cases in which the Government may desire to apply to Federal courts for equitable relief by injunction. After giving the matter consideration, the Attorney General declined to comply with the committee's request and in an official communication so informed the committee.

At the next meeting of the committee the substitute bill was again taken up and, after further discussion, the committee, by a majority vote, decided to make an adverse report upon the bill. The majority report was made by Senator Steiwer on June 18 (calendar day, June 20), 1930 (71st Cong., 2d sess., Rept. No. 1060). The minority report was filed on the same day and is known as Report No. 1060, part 2.

No action, however, was taken by the Senate upon the bill thus adversely reported and the same died upon the calendar of the Senate upon the adjournment of the Seventy-first Congress.

Soon after the convening of the Seventy-second Congress, on December 9, 1931, the present bill, S. 935, was introduced in the Senate. This bill, for all practical purposes, is the same as the substitute bill reported by the subcommittee in both the Seventieth and the Seventy-first Congresses.

Immediately upon the introduction of the bill various interests opposed to the bill again applied to the committee for further hearings. The committee, however, after considering such applications, reached the conclusion that sufficient hearings had been had, but they did allow all persons interested who desired to do so, to file written briefs upon the subject, limiting the time for the filing of such briefs to the 25th day of January, 1932.

Thereupon the full committee again took up the consideration of the bill and, after many days of consideration in executive session, the amendments heretofore suggested were agreed upon by the committee and, as thus amended, the committee, by a vote of 11 to 6, ordered a favorable report made to the Senate.

The bill, as thus reported, if the amendments suggested by the committee are agreed to, will read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in strict conformity with the provisions of this act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this act.

SEC. 2. In the interpretation of this act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of col-

lective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted.

SEC. 3. Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in section 2 of this Act, is hereby declared to be contrary to the public policy of the United States, shall not be enforceable in any court of the United States and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation, and any employee or prospective employee of the same, whereby—

(a) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or

(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization.

SEC. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this act;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified regardless of any such undertaking or promise as is described in section 3 of this act.

SEC. 5. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 4 of this act.

SEC. 6. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be

held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization, of such acts, or of ratification of such acts after actual knowledge thereof.

SEC. 7. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court; to the effect—

(a) That unlawful acts have been committed and will be continued unless restrained;

(b) That substantial and irreparable injury to complainant's property will follow:

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to those public officers charged with the duty to protect complainant's property: *Provided, however*, That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be

issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days, and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

SEC. 8. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute, either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

SEC. 9. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such re-

straining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein.

SEC. 10. Wherever any court of the United States shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings, and on his filing of the usual bond for costs, forthwith certify as in ordinary cases the record of the case, to the circuit court of appeals for its review. Upon the filing of such record in the circuit court of appeals, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceeding precedence over all other matters except older matters of the same character.

SEC. 11. In all cases in which a person shall be charged with contempt for violation of a restraining order or injunction issued by a court of the United States (as herein defined), the accused shall enjoy the right of a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed: *Provided*, That this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court.

SEC. 12. The defendant in any proceeding for contempt of court may file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the contempt

occurred elsewhere than in the presence of the court or so near thereto as to interfere directly with the administration of justice. Upon the filing of any such demand the judge shall thereupon proceed no further, but another judge shall be designated in the same manner as is provided by law. The demand shall be filed prior to the hearing in the contempt proceeding.

SEC. 13. When used in this act, and for the purposes of this act—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation

of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, or concerning employment relations, or any other controversy arising out of the respective interests of employer and employee, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by act of Congress, including the courts of the District of Columbia.

SEC. 14. If any provision of this act is held unconstitutional or otherwise invalid, the remaining provisions of the Act shall not be affected thereby.

SEC. 15. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Thus, after a little more than three years of consideration by the Judiciary Committee, with the assistance of the experts heretofore named, we have reached a point where the committee, by a substantial majority, has made a definite recommendation to the Senate for remedial legislation upon this very much controverted subject.

The limitation of the jurisdiction of Federal courts to issue injunctions in labor disputes has been a subject of public discussion for many years. It is fair to say that public sentiment on the subject has reached the conclusion that some such limitation is absolutely necessary. Both of the great political parties in their last national platforms have promised remedial legislation upon the subject. The last Republican National Convention at Kansas City adopted a plank on the subject as follows:

The party favors freedom in wage contracts, the right of collective bargaining by free and responsible agents of their own choosing, which develops and maintains that purposeful cooperation which gains its chief incentive through voluntary agreement.

We believe that injunctions in labor disputes have in some instances been abused and have given rise to a serious question for legislation.

Following this, the last Democratic National Convention at Houston, Tex., in its platform, made the following provises.

(*a*) We favor the principle of collective bargaining and the Democratic principle that organized labor should choose its own representatives without coercion or interference.

(*b*) Labor is not a commodity. Human rights must be safeguarded. Labor should be exempt from the operation of antitrust laws.

(*c*) We recognize that legislative and other investigations have shown the existence of grave abuse in the issuance of injunctions in labor disputes. No injunctions should be granted in labor disputes except upon proof of threatened irreparable injury and after notice and hearing, and the injunction should be confined to those acts which do directly threaten irreparable injury. The expressed purpose of representatives of capital, labor, and the bar to devise a plan for the elimination of the present evils with respect to injunctions must be supported and legislation designed to accomplish these ends formulated and passed.

It is, therefore, a nonpartisan question, and, assuming that both of these great political parties in their national conventions were acting in good faith, it follows that either this bill or some other legislation of similar import, carrying out the pledges made to the people of the United States, should be promptly enacted.

The injunction process is an extremely harsh remedy. Particularly is this true when a restraining order is issued without any notice to any of the defendants; and in nearly every case in a labor dispute where an injunction is issued, the restraining order is the first step. The first knowledge which the defendant has is service of notice upon him that the restraining order has already been issued. Before he

is given an opportunity to be heard, he is enjoined, and in most cases he is restrained from doing acts and things which seriously interfere with, and sometimes completely deny, his fundamental right of liberty of action, which belongs to every free citizen.

That there have been abuses of judicial power in granting injunctions in labor disputes is hardly open to discussion. The use of the injunction in such disputes has been growing by leaps and bounds.

It is impossible to report with accuracy the number of injunctions issued in either the State or Federal courts in connection with labor disputes in recent years. Only a small percentage of these injunction cases are reported officially. For example, approximately 300 were issued in connection with the railway shopmen's strike of 1922, but only 12 were officially reported (Frankfurter on "The Labor Injunction," p. 52).

In testimony before the committee the president of the American Federation of Labor submitted a partial list of 389 labor injunctions in State and Federal courts during the last decade, most of which are unreported. (Hearings, February, 1928, pp. 77-86.) Out of over 260 cases listed by the Massachusetts Bureau of Statistics in the period of 1898-1916, only 18 were officially reported (p. 51). A large majority of injunction proceedings are never carried beyond a restraining order or temporary injunction and, therefore, are unlikely ever to reach the stage of official reporting, which is concerned largely with final decrees and with decisions of appellate courts. Therefore, exact statistics can not be presented, but the statement can be safely made that since 1890, when labor injunctions were practically unknown, their issuance has steadily increased until there are few controversies of substantial importance between employers and employees in which one or more injunctions will not be issued out of either a State or a Federal court.

The right of wage earners to organize and to act jointly in questions affecting wages, conditions of labor, and the welfare of labor generally is conceded and recognized by all students of the subject. An increasing necessity for the organization of labor has been brought about by mod-

ern economic conditions and methods of doing business, which have in the main been developed by the aid of governmental authority.

It is obvious that existing conditions under which large employers of labor possess unprecedented power to dictate contracts and conditions of employment have been developed through governmental grants of authority to form corporations and organizations of corporations, whereby thousands of owners of property are enabled to combine hundreds of millions of dollars of capital and, in this way substantially to control and sometimes to monopolize opportunities for employment. Such a power, unrestrained by the organization of labor, would permit employers arbitrarily to fix the wages and conditions of labor under which millions of men and women would find their only opportunity to earn a living.

A single laborer, standing alone, confronted with such far-reaching, overwhelming concentration of employer power, and compelled to labor for the support of himself and family, is absolutely helpless to negotiate or to exert any influence over the fixing of his wages or the hours and conditions of his labor. A man must work in order to live. If he can exercise no control over his conditions of employment, he is subjected to involuntary servitude.

The efforts of the workers to preserve their freedom of association and their freedom in association to influence the fixing of wages and working conditions present questions which are unique and demand specific legislative action. The situation has been very well described by Chief Justice Taft in the opinion of the court delivered by him in American Foundries *v.* Tri-City Council (257 U. S. 184, at p. 209), reading in part as follows:

> • • • Labor unions are recognized by the Clayton Act as legal when instituted for mutual help and lawfully carrying out their legitimate objects. • • • They were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the

wages that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers opportunity to deal on equality with their employer. * * * The right to combine for such a lawful purpose has in many years not been denied by any court. The strike became a lawful instrument in a lawful economic struggle or competition between employer and employees as to the share or division between them of the joint products of labor and capital. To render this combination at all effective, employees must make their combination extend beyond one shop. It is helpful to have as many as may be in the same trade in the same community united, because in the competition between employers they are bound to be affected by the standard of wages of their trade in the neighborhood.

The foregoing opinion is cited with approval in the unanimous opinion of the Supreme Court handed down May 26, 1930, in Texas & New Orleans Railroad Co. *v.* Brotherhood of Railway & Steamship Clerks, in support of the following statement in the opinion by Mr. Chief Justice Hughes:

> The legality of collective action on the part of employees in order to safeguard their proper interests is not to be disputed. It has long been recognized that employees are entitled to organize for the purpose of securing the redress of grievances and to promote agreement with employers relating to rates of pay and conditions of work (citing the Tri-City case). Congress was not required to ignore this right of the employees, but could safeguard it and seek to make their appropriate collective action an instrument of peace rather than of strife.

If we concede, as we must, that labor has the right to combine for the lawful purpose of securing employment and has likewise the right to combine for the purpose of securing increased wages or bettering conditions of labor, then it follows, as the late Chief Justice Taft has so well

stated, that the strike becomes a lawful instrument in the economic struggle between employer and employee. It would be hypocrisy, however, to concede these rights to labor and then to prohibit any effective exercise of these rights by labor. The primary object of the proposed legislation is to protect labor in the lawful and effective exercise of its conceded rights—to protect, first, the right of free association and, second, the right to advance the lawful object of association.

No one will seriously doubt the right of Congress, under the Constitution, to limit the jurisdiction of Federal courts. The jurisdiction, for instance, of the district courts of the United States is given by act of Congress. All the courts of the United States except the Supreme Court could be entirely abolished by act of Congress, and, while Congress could not give to these inferior courts jurisdiction greater than is provided by the Constitution, it could, on the other hand, within the limits of the Constitution, give to the inferior courts such jurisdiction as Congress in its wisdom deems just. It follows, also, that having given this jurisdiction, it can, by act of Congress, take away all or any part of it. This has been clearly held by the Supreme Court of the United States in Myers *v.* United States (272 U. S. 52). At page 130 the Supreme Court said:

> * * * It is clear that the mere establishment of a Federal inferior court does not vest that court with all the judicial power of the United States as conferred in the second section of Article III but only that conferred by Congress specifically on the particular court. It must be limited territorially and in the classes of cases to be heard; and the mere creation of the court does not confer jurisdiction except as it is conferred in the law of its creation or its amendments.

In an earlier case the Supreme Court held:

> The judicial power of the United States, although it has its origin in the Constitution, is (except in enumerated instances, applicable exclusively to this

court) dependent for its distribution and organization, and for the modes of its exercise, entirely upon the action of Congress, who possess the sole power of creating the tribunals (inferior to the Supreme Court) for the exercise of the judicial power, and of investing them with jurisdiction either limited, concurrent, or exclusive, and of withholding jurisdiction from them in the exact degrees and character which to Congress may seem proper for the public good. (Cary *v.* Curtis, 3 How. 235 (U. S.) at 244.)

In a fairly recent case, the Supreme Court, construing the power of the inferior Federal courts to exercise jurisdiction over controversies between citizens of different States, pointed out that:

> The right of a litigant to maintain an action in a Federal court (on this ground) is not one derived from the Constitution of the United States, unless in a very indirect sense.

And continued:

> Certainly it is not a right granted by the Constitution. * * * The Constitution simply gives to the inferior courts the capacity to take jurisdiction in the enumerated cases, but it requires an act of Congress to confer it. * * * A right which thus comes into existence only by virtue of an act of Congress, and which may be withdrawn by an act of Congress after its exercise has begun, can not well be described as a constitutional right. (Kline *v.* Burke Construction Co., 260 U. S. 226, 233.)

Public Policy

Relief by injunction is an extraordinary and harsh remedy. It should not be resorted to except in cases where such action is imperatively demanded; and yet injunctive relief is often the only adequate and effective relief against many wrongs and to prevent many irreparable injuries in controversies of infinite variety.

It is not sought by this bill to take away from the judicial power any jurisdiction to restrain by injunctive

process unlawful acts or acts of fraud or violence. In order to assist the courts in the proper interpretation of the proposed legislation, it has been attempted to declare, by act of Congress, the public policy of the United States in relation to labor disputes and the issuing of injunctions in connection therewith. This is done in section 2 of the proposed substitute bill, as follows:

> * * * Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

It is believed that the public policy of the United States thus declared is free from any possible objection and fundamentally beyond criticism if we desire to give those who labor equal opportunity in the economic world with the employers of labor.

In the case of Texas & New Orleans Railroad Co. v. Brotherhood of Railway & Steamship Clerks, decided May 26, 1930, previously quoted, the court had under consideration the provision of the railway labor act, confirming in railway employees the right of self-organization "free from the interference, influence or coercion" of employers. It will be noted that this right of employees, written into the railway labor act, is the same right which is affirmed in the declaration of public policy in the proposed bill, which affirms, in section 2, the employee's "full freedom of association, self-organization and designation

of representatives of his own choosing," and provides that the employee "shall be free from the interference, restraint, or coercion of employers of labor." Therefore, the decision of the Supreme Court of May 26, 1930, sustaining the constitutionality and the enforceability of this right of employees under the railway labor act, directly and conclusively sustains the constitutionality of the declaration of policy in the proposed bill and the provision of the proposed bill making contracts contrary to such public policy nonenforceable in the Federal courts. In this most recent opinion, the Supreme Court held:

> Such collective action (of employees) would be a mockery if representation were made futile by interferences with freedom of choice. Thus, the prohibition by Congress of interference with the selection of representatives for the purpose of negotiation and conference between employers and employees, instead of being an invasion of the constitutional right of either, was based on the recognition of the rights of both.

It is also equally clear that the Congress has the right to declare the public policy of the United States so long as the policy thus declared does not conflict with the Constitution.

Where Congress has not declared the public policy it is within the province of the court to decide what the public policy is, but when such public policy has been declared by Congress it is the duty of the courts to follow such policy and to decide litigated questions related thereto in accordance with the public policy thus declared.

In the case of the People *v.* City of Chicago (321 Ill. 466-475) the Supreme Court of Illinois said:

> The public policy of a State is to be found embodied in its constitution, its statutes, and, when these are silent on the subject, in the decision of its courts. The public policy of the State, when not fixed by the Constitution, is not unalterable but varies upon any given question with changing legislation thereon, and any action which, in the absence of legislation thereon,

> by the decisions of the courts has been held contrary to the public policy of the State, is no longer contrary to such public policy when such action is expressly authorized by legislative enactment.

Another Illinois case on this subject is Union Trust & Savings Bank *v.* Telephone Co. (258 Ill. 202). The Supreme Court of Illinois said:

> While no statute has been enacted declaring such exclusive contracts criminal or giving a right of action to persons prejudiced by them, the courts have declared the public policy of the State, in accordance with the common law, to be opposed to such contracts which tend to put the power to render public service in the hands of one corporation and to take it away from all others. The legislature has the power to change this policy. It is a legislative question whether the public interest will be promoted by monopolistic rather than competitive service.

Chief Justice Marshall, in the case of McCulloch *v.* Maryland (4 Wheat. (U. S.) 315, 423), used the following language:

> Where the law is * * * calculated to affect any of the objects intrusted to the Government, to undertake here to inquire into the degree of its necessity, would be to pass the line which circumscribes the judicial department, and to tread on legislative ground.

The Supreme Court has expressly upheld the jurisdiction of Congress to declare the public policy of the United States in the case of Michaelson *v.* United States (266 U. S. 42, 68). In that case, the following language was used:

> The words of the act are plain and in terms inclusive of all classes of employment; and we find nothing in them which requires a resort to judicial construction. The reasoning of the court below really does not present a question of statutory construction,

but rather an argument justifying the supposititious exception on the ground of necessity or of policy—a matter addressed to the legislative and not the judicial authority.

The decisions and opinions of the Supreme Court of the United States in Bailey *v.* Alabama (219 U. S. 219) are significant in this connection. In that case the majority of the court held that a statute although in terms punishing a man for fraud in violating a contract to work, had the "inevitable effect" of convicting him of a crime in simply refusing to work and thus enforced peonage. This was held to be unconstitutional, in conflict with the thirteenth amendment, which was intended, as held in the majority opinion by Mr. Justice Hughes:

> • • • to make labor free, by prohibiting that control by which the personal service of one man is disposed of or coerced for another's benefit, which is the essence of involuntary servitude.

The opinion further stated:

> There is no more important concern than to safeguard the freedom of labor upon which alone can enduring prosperity be based.

It is noteworthy in this case that the dissenting opinion by Mr. Justice Holmes proceeded on the ground that the contract in question (to render services in consideration of an advance payment) was in itself a legal one, and that therefore a man could be legally punished for obtaining money by making such a contract with a fraudulent intention of breaking it. He met the argument that the enforcement of such contracts would result in peonage by the pertinent comment: "If the contract is one that ought not to be made, prohibit it." Thus, both opinions already support the right of Congress to declare contracts resulting practically in involuntary servitude to be contrary to public policy and to deny their enforceability or validity in the Federal courts.

The declaration of a public policy is not new to the Congress of the United States. Such a policy is explicitly declared in the present railway labor act, as previously

noted. In this connection, it is exceedingly interesting to trace the history of that act. Originally, in the transportation act, it was provided that disputes between employers and employees should, if possible, be "decided in conference between representatives designated and authorized so to confer." In administering this law the labor board found great difficulty on account of the interference by employers with the free designation of representatives by the employees. The chairman of the board appeared before the Interstate Commerce Committee of the Senate and explained the trouble. (See Hearings, Interstate Commerce Committee of the Senate on S. 2646, 68th Cong., 1st sess.) On account of this difficulty, the present railway labor act included this specific provision:

> Representatives, for the purposes of this act, shall be designated by the respective parties in such manner as may be provided in their corporate organization or unincorporated association, or by other means of collective action, without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other. (Par. 3, sec. 152, title 45, U. S. C. A., 1929 sup.)

This act definitely declared the same public policy in regard to railway employees as is declared in the proposed bill in regard to all employees, and this provision of the railway labor act has been sustained by the United States Supreme Court in Texas & New Orleans Railroad Co. *v.* Brotherhood of Railroad & Steamship Clerks, decided May 26, 1930, as previously cited.

Another instance in which Congress declared the public policy of the United States is found in section 15a of the interstate commerce act, passed as a part of the transportation act of 1920. The language referred to in that act is as follows:

> Inasmuch as it is impossible (without regulation and control in the interest of the commerce of the United States considered as a whole) to establish uni-

form rates upon competitive traffic which will adequately sustain all the carriers which are engaged in such traffic and which are indispensable to the communities to which they render the service of transportation, without enabling some of such carriers to receive a net railway operating income substantially and unreasonably in excess of a fair return upon the value of their railway property held for and used in the service of transportation, it is hereby declared that any carrier which receives such an income so in excess of a fair return, shall hold such part of the excess, as hereinafter prescribed, as trustee for, and shall pay it to, the United States. (41 Stat. 489.)

The declaration by Congress of the public policy thus declared was interpreted and sustained by the Supreme Court of the United States in the case of Dayton-Goose Creek Railway *v.* United States. (263 U. S. 456.) The opinion of the court in this case shows that the act was interpreted and sustained upon the grounds of the public policy thus declared by Congress. The court in that case said:

> The new act seeks affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country. * * * To achieve this great purpose, it puts the railroad systems of the country more completely than ever under the fostering guardianship and control of the commission.
>
> Title IV of the transportation act, embracing paragraphs 418 and 422, is carefully framed to achieve its expressly declared objects.

The public policy of the United States in regard to disputes between labor and employers of labor, having been declared as provided in the proposed bill, it will become the duty of the courts to carry out this policy and to uphold it in passing upon any litigated questions which may arise under the act. Such a declaration of public policy should be of great assistance to the courts in the adjudication of any controversies which may arise.

The "Yellow Dog" Contract

One of the very serious difficulties which has arisen in many of the injunctions which have been issued in labor disputes has been the so-called yellow-dog contract. This contract is one which requires the employee, as a condition of obtaining employment, to agree that he will not join a union while he is in such employment, or, that if he is a member of a union, he will disassociate himself from it; that he recognizes the right of the employer to discharge him without notice; that he will not quit without giving to his employer notice sufficient to enable the employer to hire some one to take his place. Such contracts frequently require the employee to agree in advance to accept such conditions of labor, hours of labor, etc., as may from time to time be decided upon by his employer. Not all of these contracts are the same, but, in general, the conditions are such as those which have been briefly outlined. In all of them the employee waives his right of free association and genuine representation in connection with his wages, the hours of labor, and other conditions of employment. In other words, he surrenders his actual liberty of contract and to a great extent he enters into involuntary servitude. Yet the Supreme Court has held very recently that "collective action would be mockery if representation were made futile by interference with freedom of choice." (Texas & New Orleans case previously cited.)

It is no defense to say that he is not compelled to sign a contract, as is so clearly pointed out in the citation from Chief Justice Taft heretofore quoted. He is helpless in dealing with his employer. This was not always true. It is only under modern conditions where, under the law, employers organize; where large corporations control labor in an entire line of industry. He is dependent upon his daily wage and so is his family. Therefore, he must accept whatever wages and whatever conditions are laid down by the employer. He has no other course to pursue. Union on his part with his fellow workers is absolutely necessary to protect his own liberty and, if he signs away

this right, to a great extent he becomes the slave of his master.

In sustaining the right of railway employees to organize the Supreme Court held:

> Congress was not required to ignore this right of the employees but could safeguard it and seek to make their appropriate collective action an instrument of peace rather than of strife. (Texas & New Orleans case previously cited.)

This doctrine upholds the purpose of the proposed bill.

One of the objects of this legislation is to outlaw this "yellow dog" contract. It has become necessary for Congress to take some action in regard to these contracts, because many of the injunctions which have been issued by Federal courts have been based wholly or in part upon such contracts on the assumption that they are valid and not contrary to public policy.

At the first blush it would seem unnecessary to pass any legislation upon the subject, because it is difficult to see how any court could sustain such a contract even though there were no statute condemning it. Many of the most eminent jurists have always believed that such contracts were void for several reasons.

First. They are contrary to public policy. If these contracts are held to be legal in one type of litigation, it would follow that they must be held legal in all other controversies, and thus in order to sustain life and support families, laboring men may be compelled to enter into practical peonage. If men must agree in advance to surrender any real liberty of contract in order to attain employment they are, under coercion of necessity, forced into working under conditions of involuntary servitude.

Second. These contracts should be held void because they are entered into without consideration. The employer on the one hand has his work which he wants done. The laborer on the other hand, as a consideration for his part of the contract, undertakes to perform the labor. In

practically every case there is no hiring for a definite period; no assurance of either work or fixed wages. The employer gives up none of his freedom of action and furnishes no consideration for the promise of the employee that he will surrender ordinary rights of "liberty of contract" which are inherent in every free citizen.

Third. Such contracts should be held void because they are signed by the employee under coercion. The employee is forced to accept all of these burdensome conditions in order to support himself and family, because no man will voluntarily deprive himself of his power of self-protection.

Nevertheless, since such contracts have been held by the courts to furnish a legal basis for preventing employees from organizing for self-help, it seems to be necessary that some legislative action should be taken to liberate workers from a servitude thus imposed. The bill declares that such contracts are:

> • • • contrary to the public policy of the United States, shall not be enforceable and shall not afford any basis for the granting of legal or equitable relief by any court of the United States.

Abuses of Injunctive Power

One of the indefensible things contained in a great many of the injunctions issued by Federal judges is the enjoining of any person, organization, or corporation from paying benefits to laborers who are engaged in carrying on a strike. As a rule, labor unions provide for a fund out of which they pay benefits to their members who are out on a strike. These injunctions prohibit them from paying such benefits, although the accumulation of this fund has been in part contributed by the very men who are on a strike and under the rules of the union they are, as a matter of fact, entitled to these benefits.

Some of these injunctions go still further. They not only prohibit the unions from paying any strike benefits to men who are on a strike, but they prohibit any person, whether a member of the union or not, from in any way giving any assistance to the persons who are on the strike.

It is a common thing, in the operation of coal mines, for the owners of the mine to own the houses in which the laborers live. They make a contract with the laborer for the rental which shall be paid, providing also for the surrender of the premises under conditions named in the contract of lease.

If a dispute arises between the employer and the employee as to whether the contract has been violated and as to whether the owner is entitled to dispossess the employee, the question becomes one of forcible entry and detainer under the laws of the State where the property is located. These laws usually, if not always, provide for the trial of forcible entry and detainer cases before an inferior court. Either side, being dissatisfied with the decision of the court, has the right to take an appeal. If the appeal is taken by the tenant he must put up a bond, not only to pay the costs, but to pay a reasonable rental for the property in case the decision in the higher court is against him. This is a right given him under the State law. The State law is general and applies to every one. It is the only means by which the question in dispute between landlord and tenant can be fully decided. If a tenant is wrongfully withholding the property the landlord is protected by the bond which the tenant must give providing for the payment of rental if the case shall ultimately be decided against him. Yet, strange as it may seem, Federal judges have been in the habit of issuing injunctions restraining outsiders—usually the term used is "any person whomsoever"—from doing anything to assist the laborer in a forcible entry and detainer case pending in the State court. All persons are enjoined from furnishing bonds to take those cases up on appeal. All persons are enjoined from paying any money in the way of expenses in connection with such litigation in the State courts. The injunctions often go far enough to prevent an attorney from giving any advice to the employee who is trying to hold possession of a house belonging to the employer. All persons are restrained from giving them any assistance while they are living in these houses, including food and fuel. Why the judges of the United States, by extending the extraordinary remedy of the injunction, should prohibit laboring

men from litigating in State courts, under the law of the State, to sustain what they claim to be their rights, is almost beyond human comprehension. In truth, such a summary method of depriving persons of their "day in court" has never been held to be "due process of law" in any other class of cases.

The bill, under section 4, takes away from all Federal courts the power to issue such injunctions. It also, in the same section, prohibits the issuing of injunctions which restrain employees from—

> * * * assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute.

It prohibits Federal courts from issuing injunctions restraining anyone from inducing or advising without threat, fraud, or violence, any of these things regardless of whether the employee may have signed the so-called "yellow-dog" contract.

Section 4 also prohibits the granting of injunctions which would restrain strikers from giving publicity to the existence of or the facts involved in a labor dispute. One of the most recent injunctions in a labor dispute was issued in the District Court of the United States for the Northern District of Iowa. This injunction was issued on the 29th day of March, 1930, enjoining the defendants, among other things, from—

> * * * printing, publishing, issuing, circulating and distributing, or otherwise communicating, directly or indirectly, in writing or verbally to any person, association of persons, or corporation, any statement or notice of any kind or character whatsoever, stating or representing:
>
> (1) That there is a strike at the mill or plant of complainant at Fort Dodge, Iowa; or that the strike of 1921 is still in existence; or that there is a controversy over wages or conditions of employment between complainant and its employees; or any false statement with reference to conditions of employment at complainant's plant.

(2) That complainant is unfair to organized union labor, or that its products are or were unfair to organized labor, or are on an unfair list.

(3) That complainant forces or requires its employees to sign or subscribe to the so-called "yellow-dog" contract.

The defendants in this case, it will be observed, were not allowed to tell anyone that a strike was in progress. They were not allowed to give any publicity in any way to the fact that a strike existed. They were not allowed to tell anyone that the complainant required its employees to sign the "yellow-dog" contract. In other words, their mouths were absolutely closed and "free speech" was forbidden. They could not, without violating this injunction, have sought advice from an attorney. The son would not be allowed to seek advice from his own father. And if the defendants violated this severe decree they would be liable for contempt of court, which means that they would be tried for an offense made illegal by the judge—an offense consisting of an act which would be perfectly lawful under the laws of the State where the controversy existed. They were not only forbidden to violate this judge-made statute, but, in case they did violate it, they would be tried by the man who made the statute. They would not be allowed a trial before a jury of their peers—a privilege granted to the vilest of criminals.

It has long been recognized by students of law and government that the power to make law and the power to enforce law should be separated as a protection against tyranny. To prevent executive tyranny, the legislative power has been carefully separated from the executive power in our scheme of government and to prevent judicial tyranny it is equally necessary to preserve the separation of the legislative power from the judicial power.

A warning against the growing exercise of legislative power by the courts in injunction cases was uttered long ago by the great commentator, Blackstone, in the following language:

In all tyrannical government, the supreme magistracy or the right of making and enforcing laws is

> vested in one and the same man, or one and the same body of men; and wherever these two powers are united together there can be no public liberty. (1 Blackstone 142.)

It is amazing to realize that in the last 40 years there has developed in the American courts the practice of writing a special law to fit the individual case by judges in issuing labor injunctions; and that thereupon the judge, who himself wrote the law, has undertaken to prescribe the penalty for its violation and to punish the violator without permitting the accused to enjoy a trial by jury or even to insist upon a trial before another judge. It can not be successfully claimed that the courts have not written into these injunction cases a new law of labor disputes, fitting the law to each particular case, and then enforcing this new law made by the court.

Pomeroy, perhaps the leading authority, describes the development of the law compactly in his Equity Jurisprudence in the following language:

> The courts have thus been required to face such questions as the nature and extent of the capitalist's rights in the management of his business and of the workingman's property in his labor; to decide how far the employer shall be protected in his right to have labor and custom flow to him free from the interference of third parties and how far the laborer shall be protected from similar interference in his contract of employment or his right to secure employment; to determine what limits shall be placed upon the individuals and combinations of individuals in seeking their economic advancement at the expense of their fellows. All these and other problems have come before the courts in rapid succession. (Pomeroy, Equity Jurisprudence (4th Ed.) vol. 5, p. 4566, sec. 2018.)

There can be no question, therefore, that there has been created, as a result of writing law into injunction orders and then enforcing those orders by the same judge who wrote them without a grant of trial by jury, that condi-

tion of uniting the two powers of making and enforcing laws in one person or one body of men wherein, using the language of Blackstone, "there can be no public liberty."

It is difficult to see how any civilized people could indefinitely submit to such tyrannical procedure. It is not difficult to understand how such cruel laws, made not by any legislature but by a judge upon the bench, should bring our Federal courts into disrepute. Neither is it difficult to see how such injunctions, violating the conscience of civilization, should frighten persons against whom such injunctions are issued in desperation. What free American citizen is willing to submit to the violation of his sacred rights of human liberty and freedom?

Responsibility for Unlawful Acts

Section 6 of the bill relates to damages for unlawful acts arising out of labor disputes. It is provided that officers and members of any labor organization, and officers and members of any employers' organization, shall not be held liable for damages unless it is proven that the defendant either participated in or authorized such unlawful acts, or ratified such unlawful acts after actual knowledge thereof.

To hold that officers or members of a labor organization, or the organization itself, should be liable for damages for unlawful acts committed while a strike is on, without clear, actual proof of authorization, participation in, or ratification of such unlawful acts, would go far toward the destruction of organized labor.

Moreover, it will be observed that this section, as do most of the other prohibitive sections of the bill, applies both to organizations of labor and organizations of capital. The same rule throughout the bill, wherever it is applicable, applies both to employers and employees, and also to organizations of employers and employees.

In most cases where strikes occur involving a great many employers and employees and covering a comparatively large territory, there are often unlawful acts committed in the way of injury to property or to persons. It is not the intention of the bill to protect anybody, whether he be employer or employee, from punishment for the commission of unlawful acts either as against property or

persons. But no person or organization should be held thus liable unless he or it caused the unlawful act or participated in it or ratified it. It has often occurred that employers themselves have secured the services of detectives who, under the guise of labor men, have gained admission into labor unions. When this happens these detectives are usually doing everything within their power to incite employees who are on strike to commit acts of violence, and such detectives, contrary to the definite instructions of labor union leaders, sometimes commit unlawful acts for the express and only purpose of laying the foundation for injunctive process, of bringing discredit upon the union, and of making its officers and members liable for damages.

In case of a strike, where the officers of the labor union are doing everything within their power to prevent acts of violence from being committed by any person, the law should fully protect them and save them and the members of their organization who are following their advice from liability in damages because of unlawful acts of persons who are either directly or indirectly connected with those who are trying to defeat the purpose of the strike.

Opposition to this section has been voiced on the ground that it seeks to establish a "new law of agency." In the first place, this section is concerned especially with establishing a rule of evidence. There is no provision made relieving an individual from responsibility for his acts, but provision is made that a person shall not be held responsible for an "unlawful act" except upon "clear proof" of participation or authorization or ratification. Thus a rule of evidence, not a rule of substantive law, is established. "The general power of every legislature to prescribe the evidence which shall be received and the effect of that evidence in the courts of its own government," has been repeatedly upheld by the Supreme Court. (See Fong Yue Ting *v.* U. S., 149 U. S. 698, 749; Bailey *v.* Alabama, 219 U. S. 219, 238.)

But the argument is made that a man is held legally responsible for the acts of his agents taken in due course of employment. This argument is evidently based upon a doctrine of the civil law of negligence. It has no appli-

cation to the criminal law. If a man is held responsible for an unlawful act, his responsibility rests on the basis of actual or implied participation. He is responsible for conspiring to do an unlawful act or for setting in motion forces intended to result, or necessarily resulting in an unlawful act.

> Strictly speaking, the legal relation of principal and agent does not exist in regard to the commission of criminal offenses. All who participate in the commission of such offense are either principals or accessories. (Anderson *v.* State, 22 Ohio State 305.)
>
> But where the agent's criminal act is unauthorized and is not sanctioned or acquiesced in by the principal, especially where it is contrary to the principal's direct instructions, the latter can not be held criminally responsible therefor. (Clark and Skyles, Law of Agency, Vol. I, p. 1140.)

The distinction should be clear. A man operating a dangerous machine negligently injures someone, and the negligence is imputed to the employer. But there is a distinction between the torts of an employee and the crimes of an employee, and criminal responsibility is not to be imputed. If the president of a corporation sends a bill collector to persuade a debtor to pay a bill, instructing him to collect it in a peaceable manner, he does not become responsible for an assault by his employee upon the debtor.

According to the same reasoning, why should an officer of a labor union, who has specifically advised members that violence must be avoided, become responsible for the hot-headed action of some member in perhaps assaulting a strike-breaker? Again, the relationship between officers and members of labor unions and other members is not that of employer and employee. The officers chosen by a union are not employers of the membership. They have no control over their associates based upon the power of determining whether or not they will employ them. It may be accepted that if a group associated in common activities becomes controlled by a lawless majority, it may be necessary for law-abiding men to dissolve their association with lawbreakers; but the doctrine that a few lawless men can change the character of an organization

whose members and officers are very largely law-abiding is one which has been developed peculiarly as judge-made law in labor disputes, and it is high time that, by legislative action, the courts should be required to uphold the long established law that guilt is personal and that men can only be held responsible for the unlawful acts of associates because of participation in, authorization or ratification of such acts. As a rule of evidence, clear proof should be required, so that criminal guilt and criminal responsibility should not be imputed but proven beyond reasonable doubt in order to impose liability.

There has been a distinct conflict of opinion in the courts as to the degree of proof required. Mere ex parte affidavits establishing a certain amount of lawless conduct in the prosecution of a strike have been held in some instances to establish a "presumption" that the entire union and its officers were engaged in an unlawful conspiracy; and, on the other hand, other courts have declined thus to substitute inference for proof, rejecting such a doctrine in language such as the following used in a New York case: "Is it the law that a presumption of guilt attaches to a labor union association?" Various examples of these different rulings are quoted in The Labor Injunction, by Frankfurter and Greene, pp. 74-75.

It is appropriate and necessary to define by legislation the proper rule of evidence to be followed in this matter in Federal courts. That is the only object of section 6.

Procedure

The bill, in section 7, provides for the procedure which shall be followed in case application is made for a temporary restraining order or for a temporary or permanent injunction. It provides that no temporary or permanent injunction shall be issued except after hearing the testimony of witnesses, under oath, in open court. The court is also required, before it issues a temporary or permanent injunction, to permit the defendants to offer testimony in opposition to such injunctions; and, before the court is authorized to issue the temporary or permanent injunction, it must find that unlawful acts have been threatened or committed and will be executed or continued unless re-

strained; that substantial and irreparable injury to complainant's property will follow, and that as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief.

This procedure balances the effect of an order upon both parties, and while an injunction might be granted against certain unlawful acts the injury to complainant from such acts can not be made the basis of enjoining other acts from which complainant will suffer but little, but the prohibition of which may cause greater injury to the defendants. This is only statutory sanction of the best and long established practice in equity. (See Pomeroy, Equity Jurisprudence (4th ed.), sec. 1685.)

It is likewise provided in section 7, that in addition to the ordinary requirements applying to all applications for injunction, the court must find—

> That the public officers charged with the duty to protect complainant's property have failed or are unable to furnish adequate protection.

This is an entirely new provision, but it is believed to be a just one.

These injunctions are issued upon an allegation, among other things, that unless the order is issued complainant's property will be injured or destroyed. If the public officers whose duty it is to protect complainant's property are able and willing to give the protection required by law, there is no reason why the court of equity should take over the functions of the executive department and undertake to police their districts and no reason why the extraordinary and one-sided remedy of an injunction should be resorted to. It seems, therefore, but fair that before the injunction is issued, the court should find from the evidence that such officers have failed or are unable to furnish the protection required by law.

Injunctions are often applied for and issued for the moral effect that such injunctions will have in disheartening and discouraging employees engaged in a strike, rather than because of any real necessity to protect property.

Provision is also made in the bill for the issuance of a temporary restraining order without notice. This can be done only if the complaint shall allege that such temporary restraining order is necessary and that if time is taken to give notice a substantial and irreparable injury to complainant's property will be unavoidable.

Before issuing such temporary restraining order, however, the court must take testimony under oath, and such testimony must be sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice.

Injunctions issued without notice to the defendants against whom the injunctive order is sought are always ex parte. No good reason exists why this evidence thus taken, without the presence of the defendant, should not be required to be sufficient, if sustained, to sustain an order issued after notice and hearing. If the complainant can not make a prima facie case without notice, he certainly never would be able to make such a case after notice when the defendant was in court contesting the issuing of the injunction.

The bill provides that such temporary restraining order so issued without notice shall not be effective for a longer time than five days. This, however, is a reasonable requirement. The only object in issuing a temporary restraining order without notice is because it is alleged by the complainant that notice of such application would bring about destruction of his property. Therefore, the time that such an extraordinary process should be effective without notice should not be prolonged beyond the time that it would take to give notice, and it is difficult for any mind to conceive of a condition where notice could not be given and a hearing held within the 5-day limit.

It is provided in section 8 that no restraining order or injunctive relief shall be granted to any complainant who has not complied with any obligation imposed by law in regard to the settlement of any labor dispute. Neither shall such order issue unless the complainant has made every reasonable effort to settle such dispute, either by the aid of negotiation or with the aid of any available governmental machinery of mediation or voluntary arbi-

tration. But where such negotiations are in progress and have not been completed, the court is not required, before issuing the writ, to await the outcome of such action if the court is satisfied that irreparable injury is threatened.

This section simply requires that a complainant shall not be entitled to injunctive relief who has failed to comply with any legal obligations which may exist, to be performed on his part. In other words, he must go into court with clean hands. This doctrine here announced is that persons have no right to seek the aid of Federal courts and impose upon them additional burdens who have not sought to do all within their power to avoid the aid of the courts and who are not themselves aggravating or causing the dispute by violation of legal obligations.

It has often occurred, where employers have refused to confer with their employees, as required by law; or where they have refused to comply with the requirements of the law for the protection of employees, that they have nevertheless sought to have the court restrain the employees from promoting their interests properly in the resulting dispute. An employer who has himself brought on a controversy by wrongful conduct is not entitled to the aid of equity in advancing his interests in the resulting conflict.

> A court of equity acts only when and as conscience commands; and if the conduct of the plaintiff be offensive to the dictates of natural justice, then, whatever may be the rights he possesses, and whatever use he may make of them in a court of law, he will be held remediless in a court of equity. (Deweese *v.* Reinhard, 165 U. S. 386, 390.)

Other cases and authorities upholding this principle written into the proposed bill are cited in the recent opinion of the Supreme Court of Wisconsin in Adler & Sons *v.* Maglio (228 N. W. 133), where the court denied injunctive relief and dismissed the complaint of an employer whose conduct was described by the court as follows:

> Plaintiff pursued a course of conduct that precipitated a labor war. When the tide of battle seemed to be setting against it, the plaintiff sought to withdraw

from the field to which it had deliberately gone, and appealed to a court of equity for protection from the consequences that naturally flowed from the course of conduct which it had deliberately pursued.

A court of conscience will not extend its strong arm to protect one who has pursued such a course of conduct. It will leave such applicant for relief where it had deliberately chosen to place itself. (P. 125.)

Later the court further upheld application of the equitable rule in the following language:

> Its strict application to all labor controversies ought to admonish both parties to these modern industrial struggles that, while they may conduct their own affairs in any way that does not violate the law, neither can be guilty of conduct that invades the rights of the other in regard to, or all events connected with, the matter of litigation, so as to in some measure affect the equitable relations subsisting between the two parties without forfeiting all right to resort to the extraordinary powers of equity. (P. 126.) (See also Cornellier *v.* Haverhill Shoe Manufacturers Association, 212 Mass. 554; Weegham *v.* Killefer, 215 Fed. 168; Pomeroy, Equity Jurisprudence (fourth ed.) sec. 398.)

The bill also provides for a speedy appeal by any party to the case who may be dissatisfied with the action of the court, either in allowing or denying the injunction; and when a case is appealed to the circuit court of appeals, it becomes the duty of that court to consider the case with the greatest possible expedition and to give such cases precedence over all other matters except older matters of the same character.

Jury Trial in Contempt Cases

Section 11 of the bill provides that where a person is charged with indirect criminal contempt for violation of a restraining order or injunction, the defendant shall have the right to demand a speedy and public trial by a jury. This requirement does not apply to contempts committed

in the presence of the court or so near thereto as to interfere directly with the administration of justice. Neither does it apply to misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court.

Section 12 provides that the defendant in any proceeding for contempt of court is authorized to file with the court a demand for the retirement of the judge sitting in the proceeding if the alleged contempt arose from an attack upon the character or the conduct of the judge and if the attack occurred otherwise than in open court. Upon the finding of such a demand another judge shall be designated to hear the contempt proceeding, as provided in Section 21 of the Judicial Code.

It will be observed that sections 11 and 12 have a general application and are not confined to labor disputes.

The ordinary criminal laws provide that any person charged with a crime shall have the right to a jury trial. The person tried for contempt of court is tried for a criminal act. It is true this act has not been made criminal by a statute, but by the order of a judge. The judgment, however, can deprive the defendant of his liberty, can confine him to jail, and the length of the term of confinement is within the discretion of the judge who made the order. The judge becomes the legislature and, as such legislature, he makes something a crime that is not a crime under the general law. He then sits in judgment and tries the person who is charged with violating the law which he has enacted. What difference is it to the defendant, so far as his punishment is concerned, whether the law has been made by the judge or by the legislature? His suffering is just as great in one case as in the other. Why should he be deprived of a jury trial when the law is made by one man instead of by the regular legislative authority? And in addition to all this, what defense can be made of the law which provides that the defendant shall have no opportunity, not only for an impartial jury, but for an impartial judge as well? And when the charge is made that the contempt arises from an attack upon the character or the conduct of the judge, what principle of justice would permit this same judge to sit in judgment upon

the accused? All sense of justice and all fair judicial procedure revolt at such a condition.

If an attack is made upon the character or the conduct of the judge by a writer in a newspaper, for instance, is it fair, is it compatible with our idea for jurisprudence, that the judge against whom the attack is made should preside at the trial of the offender? Suppose a judge were assaulted on the street by a common thug. Our procedure would not permit this judge to sit at the trial of the person charged with the assault and battery. He would be tried under the laws provided by the legislature. In an injunction case, the general laws of the legislature would not apply. The person assaulted would not only preside at the trial but he would fix the punishment without regard to statute but in accordance with his own idea as to what the punishment should be.

It is interesting to note that, severe as was ancient law, it was the prevailing practice in the English courts for centuries that trials for criminal contempt were tried by a jury. It is only in the American courts in the last century that such trials by the judge alone developed. And yet we live under a Constitution which provides that—

> In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed. (Amendment 6.)

Also—

> The trial of all crimes, except in cases of impeachment, shall be by jury. (Art. III.)

The power of the Congress to require trial by jury in cases of indirect criminal contempt should not be now subject to serious question. Criminal contempt consists of disobedience of the orders of the court, obstructions to the administration of justice, which are punished as an offense against the court and differ from civil contempt in that the purpose of punishment is not to grant relief to a litigant but to maintain the dignity of the court and uphold the power of Government. Direct criminal contempts

consist of misbehavior in the presence of the court or so near thereto as to interfere directly with the administration of justice. Such contempts are expressly excepted from the provisions of trial by jury. Indirect criminal contempt consists of violation of the orders of the court, which is exactly the same as the violation of law, except that the law is written in the order of the court instead of in a statute.

The Supreme Court sustained the right of trial by jury required by congressional enactment in the Clayton Act in cases of indirect criminal contempt in the case of Michaelson *v.* United States (266 U. S. 42), where the unanimous opinion of the Supreme Court, written by Mr. Justice Sutherland, reads as follows:

> Contempts of the kind within the terms of the statute (criminal contempts described in the Clayton Act) partake of the nature of crimes in all essential particulars. "So truly are they crimes that it seems to be proved that in the early law they were punished only by the usual criminal procedure, 3 Transactions of the Royal Historical Society, N. S., p. 147 (1885), and that at least in England it seems that they still may be and preferably are tried in that way." Gompers *v.* U. S. (233 U. S., 604, 610-611). * * * The statutory extension of this constitutional right (trial by jury) to a class of contempts which are properly described as "criminal offenses" does not, in our opinion, invade the powers of the courts as intended by the Constitution or violate that instrument in any other way (pp. 66-67).

Section 13 of the bill defines various terms used in the act, and it is not believed that any criticism has been or will be made to these definitions.

The main purpose of these definitions is to provide for limiting the injunctive powers of the Federal courts only in the special type of cases, commonly called labor disputes, in which these powers have been notoriously extended beyond the mere exercise of civil authority and wherein the courts have been converted into policing agen-

cies devoted in the guise of preserving peace, to the purpose of aiding employers to coerce employees into accepting terms and conditions of employment desired by employers.

The proposed bill is designed primarily as a practical means of remedying existing evils, and limitations are imposed upon the courts in that class of cases wherein these evils have grown up and become intolerable. This is a reasonable exercise of legislative power, and in order that the limitation may not be whittled away by refined definitions of what persons are to be regarded as legitimately involved in labor disputes, the bill undertakes specifically to designate those persons, who are entitled to invoke the protections of the procedure required.

The other sections of the bill contain the usual provisions in regard to the possibility of the court's holding portions of the act invalid and in relation to the repeal of acts in conflict with the provisions of the proposed legislation.

FILE COPY

IN THE

Supreme Court of the United States

October Term, 1946.

Nos. 759. 760, 781, 782, 811.

THE UNITED STATES OF AMERICA, *Petitioner-Respondent*,

v.

UNITED MINE WORKERS OF AMERICA, an Unincorporated Association, and JOHN L. LEWIS, Individually and as President of the United Mine Workers of America, *Respondents-Petitioners*.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

APPLICATION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE, AND BRIEF.

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APPLICATION FOR LEAVE TO FILE BRIEF.

The National Lawyers Guild prays for leave to file a brief as amicus curiae in the above-entitled case. The applicant has filed with the clerk the written consent of

counsel for the United Mine Workers and John L. Lewis, and has also filed letters from counsel for the government advising that "the United States interposes no objection to the filing of such brief", "provided that the Court is agreeable to that action." The applicant believes that these letters are sufficient to meet Rule 27(9) of the Court, but makes this application in the event it is mistaken.

The National Lawyers Guild is an organization of members of the American bar, one of whose purposes is to represent and express the views of the progressive bar in economic, social and civil liberty fields. It believes that the actions of the government and the court below in this case are contrary to the public interest, infringe fundamental rights of labor, and reverse a whole course of progressive government relations to labor. It believes that these actions, if sustained, will expose the bench and bar to merited criticism. For these reasons and because of the importance of these cases as precedents, the National Lawyers Guild requests leave to file a brief as amicus curiae.

BRIEF FOR AMICUS CURIAE.

ARGUMENT.

I. The District Court Had No Jurisdiction to Issue the Temporary Restraining Order and the Preliminary Injunction.

A. The Norris-LaGuardia Act applies even though the government was the complainant.

In ruling that the Norris-LaGuardia Act[1] did not apply to the present case (R203), the District Court relied on the doctrine that the sovereign is not bound by legislation unless expressly mentioned. The Court held that the act did not oust it of jurisdiction where the government was the complainant in "a matter involving the public interest" (*ibid.*).[2] There was no finding that the government was the employer of the miners, as it is of post-office employees, and no such contention was or can be seriously made in the light of the record.

Since there is no dispute that the activities restrained are among those listed in section 4 of the act, the holding below is thus at variance with this Court's recognition that the Norris-LaGuardia Act does apply in governmental suits.[3]

The sovereignty doctrine, moreover, is only an aid to determining whether a statute imposing duties upon, or limiting the rights of, private persons (such as one requiring buildings to be heated or setting periods of limitation) also controls or limits the government. It goes no further,

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[1] 47 Stat. 70, 29 U.S.C. 101-115.

[2] And *cf.* the conclusion of law that the defendants were obstructing the government's exercise of its sovereign functions (R99).

[3] *United States* v. *Hutcheson*, 312 U.S. 219, 227, 235; *United States* v. *American Federation of Musicians*, 318 U.S. 741. *Cf. United States* v. *Weirton Steel Co.*, 7 Fed. Supp. 255 (D.Del.).

and does not, for example, make general rules of procedure in civil actions inapplicable to suits by the government.[4] The District Court's ruling, however, unwittingly employs a wholly novel theory that no legislation avails against the government's petition in the absence of express language to the contrary. Under this theory, the government could restrain as violations of the anti-trust laws activities expressly exempted therefrom, as by section 2 of the Webb-Pomerene Act.[5]

Furthermore, the subject-matter of the Norris-LaGuardia Act is itself an express limitation on the sovereign, in that it curtails the authority of one of its branches, the judiciary.[6] The court below thus indulged in the solecism of holding that the judiciary branch of the sovereign escaped from limitations imposed upon it by the legislative branch because these limitations did not apply to the executive branch. The court misconceived the question, which is not whether the "government" is bound, but whether the judicial branch of the government is bound by a statute addressed solely and specifically to it.[7]

The District Court's reliance on a dogma which at best is merely an aid to construction[8] disregarded the background and legislative history of the Norris-LaGuardia Act. That history need not be reviewed here at length; it has been reviewed by this Court itself in *Milk Wagon Drivers Union* v. *Lake Valley Farm Products, Inc.*, 311 U.S. 91.[9] The Act, founded on a distrust of the actions of federal district

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[4] *Green* v. *United States*, 9 Wall. 655, 658; *Custer* v. *McCutcheon*, 283 U.S. 514; *Fink* v. *O'Neil*, 106 U.S. 272.

[5] 40 Stat. 517, 15 U.S.C. 62.

[6] The Chancellor in his judicial capacity was, of course, as much a vicar of the king as he, or any other minister, was in his executive capacities. 1 Holdsworth, History of English Law (sixth ed., 1938) 395-416.

[7] *Cf. Fink* v. *O'Neil*, *supra*, at p. 280.

[8] *Cf. Green* v. *United States*, *supra*.

[9] See also *New Negro Alliance* v. *Grocery Co.*, 303 U.S. 552, 562.

courts in labor controversies, was intended to end the "abuses of judicial power in granting injunctions in labor disputes".[10] Among the most notorious of these abuses, cited in the legislative debates and reports in support of the bill and causes of its passage, were injunctions issued on complaint of the federal executive.[11] Fantastically enough, the government now cites (R55), in support of its position that the Act does not apply, the very cases[12] which contributed to its passage.

Further orthodox assistance to construction is supplied by the debates[13] on and rejection[14] of the Beck amendment, which sought to preserve the equity jurisdiction where the public welfare was concerned by a labor dispute, and the Blanton amendment, which sought to preserve the equity jurisdiction on petition of the government. It is also supplied by Congress' felt need to expressly create an exception to the Norris-LaGuardia Act to permit courts to issue restraints on the government's applications for enforcement of orders of the National Labor Relations Board.[15] Finally,

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[10] *Milk Wagon Drivers Union* v. *Lake Valley Farm Products, Inc.*, 311 U.S. 91, 102, quoting S. Rep. No. 163, 72nd Cong. 1st Sess., p. 8.

[11] E.g., *In Re Debs.*, 158 U.S. 584; *U.S.* v. *Railway Department Employees*, 286 Fed. 228 (N.D. Ill.). See Frankfurter & Greene, *The Labor Injunction*, pp. 52, 103, 115, 174, 218, 253; 75 Cong. Rec. 5462-5511; Sen. Rep. No. 163, 72d Cong. 1st Sess., p. 8.

[12] *In Re Debs, U.S.* v. *Railway Department Employees, supra*, note 9.

[13] 75 Cong. Rec. 5472, 5473, 5476, 5500. Thus Congressman Beck lamented that the action taken on the government's application in the *Debs* case would have been impossible if the bill had at that time been law, and Congressman LaGuardia supported the bill by criticizing the government's tactics in "looking around for" and finally selecting an amenable judge to grant a restraint "without a minute's delay" against the railway shopmen's strike.

[14] 75 Cong. Rec. 5505 (defeat of the Beck Amendment), 5503 (defeat of Blanton amendment).

[15] 49 Stat. 453, 29 U.S.C. 160(h).

the legislative history of the War Labor Disputes Act[16] and rejection of amendments to confer injunctive liability thereunder, now that Congress realized that the government was affected by the Norris-LaGuardia Act and that it rejected the labor injunction on application of the government in favor of criminal sanctions as the exclusive enforcement device. Senators and Representatives of both major parties repeatedly expressed opposition to efforts to annul the Norris-LaGuardia Act by permitting the federal government to obtain injunctions to enforce the War Labor Disputes Act.[17]

The court's holding adds to the Norris-LaGuardia Act an exception which subverts its declared policies even more than an allowance of exceptions to private employers. The government, when invoking equity jurisdiction in a labor dispute, has advantages over the employer seeking the same remedy. The government can intervene with an aura of impartiality. Its prestige influences the rank-and-file strikers. It can more readily select a forum favorable to its views—either crassly as in the notorious Wilkerson injunction[18] or, in more orthodox fashion, by using its greater practical flexibility in choosing from the districts where venue will lie.

B. This case involves and grows out of a labor dispute.

The government asserted below that the Norris-LaGuardia Act was inapplicable because "the sovereign, in the exercise of its functions, can at no time be held to be engaged in a labor dispute with private persons" (R57). This novel and somewhat cryptic contention apparently was not too seriously pressed, since it is missing from the District Court's conclusions of law.

Wholly aside from its questionable intrinsic validity, the assertion is completely irrelevant. The Act deprives

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[16] 57 Stat. 163, 50 U.S.C. App. (Supp. V), 1501-1511.

[17] 89 Cong. Rec. 3901, 3906, 3988, 3992, 5300, 5325, 5372.

[18] Frankfurter & Greene, loc. cit.; note 13, *supra*.

federal courts of jurisdiction "in any case *involving or growing out of* any labor dispute". This case involved and grew out of a labor dispute between the miners and the mine owners, which, like most labor disputes, grew out of demands by the workers for better pay and improved working conditions. The very action by the government in taking control of the mines was occasioned by this labor dispute.[19] And the government's recognition that the issue was between these two parties is shown by its refusal to negotiate with the miners on their demands and its direction that they be addressed to the private mine owners (R30-1, 411). It was this position of the executive that was the immediate occasion of the coal strike (R493-4).

C. The coal strike was not in obstruction of the government's exercise of sovereignty.

The conclusion of the court below that the coal strike obstructed the government's exercise of sovereignty (R99) is at utter variance with the facts. The private owners at all times continued to operate the mines and, subject to one exception, retained all the incidents of their private ownership.[20] The government's exercise of sovereignty, which constituted that exception, consisted solely in its supplanting the mine owners in conducting dealings with the United Mine Workers, that is, in negotiating with the union and directing performance of the terms agreed upon. When the government refused to negotiate with the union on its demands and directed that they be addressed to the mine owners, the government was attempting to surrender the only sovereign function it had exercised. When the miners resisted this position, they were

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[19] Exec. Order No. 9728 (R335-6).

[20] Thus each company continued operation "in the regular course of business as a going enterprise" with the same personnel (R415-6, 231), for private profit and at private risk (R232). The private owners paid wages and workmen's compensation (R233) and taxes (R234).

actually insisting that the government continue to exercise its sovereign function. And it is for this that the court below concluded that the defendants were obstructing the exercise of the government's sovereign functions!

There was not, therefore, as the District Court misconceived, a conflict between the union and the republic. The government's injunction suit was not to protect the public interest but to support the private mine owners. It was attempting to compel the miners to bargain with the owners and at the same time insisting that they must give up their bargaining power—the right to strike.

If the Secretary of the Interior had sincerely wished to protect the public from a coal strike, he could have continued to do exactly what he had done earlier under the War Labor Disputes Act. He could have bargained with the union just as he did initially. In assistance of his bargaining, or if it was of no avail, the Secretary could have relied on the criminal penalties of the War Labor Disputes Act in an effort to coerce the continuance of work. The course the executive has employed, however, constitutes an ill-concealed effort to enforce by injunction the no-strike provisions of the War Labor Disputes Act, even though injunctive enforcement had been rejected by Congress in its passage of that act and is specifically prohibited by the Norris-LaGuardia Act. The District Court's approval of this device resulted in the imposition of a punishment far greater than that provided by the War Labor Disputes Act and the deprivation of the procedural safeguards provided for defendants in ordinary prosecutions.

D. The District Court had no inherent jurisdiction to issue the temporary restraining order.

It was the theory of both the government and the District Court that even if the Norris-LaGuardia Act applied, the court had jurisdiction to issue a temporary restraining order to preserve the status quo pending its determina-

tion of the jurisdictional question. Leaving aside the debatable point of whether the court's order maintained or disturbed the status quo, this asserted inherent jurisdiction cannot be exercised if denied by Congress under the authority granted it by the Constitution.[21] Such a denial was imposed by the Norris-LaGuardia Act.

First, no inherent jurisdiction exception appears in the flat wording of section 4 that no federal court shall have jurisdiction to issue *any* restraining order against described activities in *any* case involving or growing out of a labor dispute. The government does not dispute the fact that the acts restrained by the District Court are within those listed in section 4.

Secondly, section 7 of the Act permitting temporary restraints of unlawful acts is obviously exclusive both as to the scope of such restraints and the detailed procedures which must be complied with prior to their issuance.

Thirdly, the urged inherent jurisdiction exception would nullify the objectives of the Act. If the legislature did not trust the federal courts to exercise equity jurisdiction in labor disputes, it cannot have trusted them to exercise it as inherent in their jurisdiction. It makes no difference to a union whether a temporary restraint which breaks a strike is issued on a theory of inherent jurisdiction or on some other theory. Furthermore, because of the importance of timing in the collective effort, a strike can usually be as readily broken by a temporary restraint as by a permanent injunction. And even if a ten day restraint is not sufficient to break a strike, it can be, as it was here (R158-60), extended "for good cause". This court can take judicial notice of the fact that the coal strike was in fact broken by the action of the court below.

The government supports its inherent jurisdiction argument by *United States* v. *Shipp*, 203 U.S. 563 and *Carter* v. *United States*, 135 F. (2d) 858(R76-8).

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[21] Article III, secs. 1 and 2.

In the *Shipp* case, however, there was not involved any statute which, as here, ousted the federal courts of jurisdiction. Furthermore, punishment may not be imposed for violation of a court order which infringes constitutional rights,[22] as, we subsequently contend, did the temporary restraining order in this case. Finally, it appears that the *Shipp* doctrine is applicable only to orders of the Supreme Court, in view of the decisions that no punishment may be imposed for contempt of an order issued by a federal inferior court without jurisdiction.[23]

The *Carter* case represents flagrant error by a divided bench of the Fifth Circuit:

II. The Temporary Restraining Order and the Temporary Injunction Were Invalid As Violations of Constitutional Liberties.

The District Court described its restraining order as only "an order on Mr. Lewis . . . to order these men not to cease work until the merits of the controversy could be determined" (R172-73). It stated that there was no order to the miners "that they could not quit" (R118), and that it did not understand the order as prohibiting the miners from striking (R173). However, the restraining order (and, by the same token, the temporary injunction, which includes identical restraints) plainly prohibited the miners from striking, picketing, and otherwise using their strength collectively. The restraint expressly covers "all persons in active concert or participation" with the union and its president, and the members of the union are such persons. In addition, a restraint which prevented the miners' chosen leaders and trustees from exercising their leadership, and even from informing the miners of their version of a labor controversy, obviously was an effective restraint upon their constituents. The miners

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[22] *Thomas* v. *Collins*, 323 U.S. 516 (1945).

[23] *Ex Parte Rowland*, 104 U.S. 604, 612; *Ex Parte Fisk*, 113 U.S. 713, 718.

were thus stripped, as a practical matter, of their power to act in an organized, effective and collective manner.

The orders restrained the defendants, and persons in active concert or participation with them, from, among other things, "coercing, instigating, inducing or encouraging the mine workers . . . to interfere by strike, slow down, walkout, cessation of work, or otherwise, with the operation of said mines". It also restrained them "from issuing or otherwise giving publicity to any notice" that the Krug-Lewis agreement had been or would be terminated.

Presumably an individual miner could quit work without violating the orders. But he could not quit in participation with other miners, he could not picket, he could not persuade other miners to quit, and he could not even talk about their alleged contractual privilege to quit. In short, the miners could not combine nor could they be led. They could not *effectively* attempt to enforce their demands for better wages and working conditions.

These restraints thus run afoul of the First, Fifth and Thirteenth Amendments to the Constitution. This Court has repeatedly held that the right to give publicity to the facts of a labor dispute is constitutionally guaranteed,[24] as is the right to strike.[25] Furthermore, servitude can be involuntarily imposed not only by chains but by more sophisticated means, such as preventing access to information which would cause the quitting of work, including information as to the wishes and advice of one's chosen and trusted representatives, and by making quitting of work ineffective to accomplish its purpose.

In the above connection, it should be emphasized that there is not involved here any such question as the right of

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[24] *Thornhill* v. *Alabama*, 310 U.S. 88; *Hague* v. *CIO*, 307 U.S. 496; *Thomas* v. *Collins*, 323 U.S. 516; *Carlson* v. *California*, 310 U.S. 106; *AFL* v. *Swing*, 312 U.S. 321.

[25] *Wolff Co.* v. *Industrial Court*, 262 U.S. 522; *Stapleton* v. *Mitchell*, 60 F. Supp. 51; *U.S.* v. *Petrillo*, N.D.Ill., Nov. 25, 1946.

the government to prevent its military personnel or even its civilian employees from striking. The miners were employees of the mine owners, not of the government. It is true that on a showing of a need to prosecute a war, the government could probably prohibit strikes even by persons privately employed. But here no such showing was or can be made. It is submitted furthermore, that a prohibition of strikes of private employees would be valid as a war prosecution measure only was part of a more general framework which protected from exploitation those whose own bargaining power had been eliminated. Such a framework would include controls of discharges, controls of wages, and controls of prices. At the time of the coal strike, however, the Administration had abandoned most of the war-time controls which might fit into such a pattern, and has since junked others. Thus price controls had by then been lifted and the Wage Stabilization Board which had inherited some of the authority of the eliminated War Labor Board, had been stripped of power and personnel.

III. The Proceedings Below Were Erroneous and Invalid Because of Numerous Procedural Errors, a Pervading Bias, and Unfairness of Trial.

The proceedings below were so shot through with confusion, bias and mistake as to make the orders entered reversible not only for procedural error but also as invasions of an accused's constitutional right to a fair and orderly hearing. From a broad point of view, this unfairness of trial is chiefly significant, perhaps, as a warning of the abuses which will inevitably attend a recrudescence of the labor injunction. The record supplies a strong, even if hardly needed, confirmation of Congress' historical judgment that federal district judges cannot be trusted to exercise equitable jurisdiction in labor disputes.

A. The contempt proceedings confused civil and criminal contempt, and the sentence was in punishment of a non-existent crime.

We have the trial judge's own word for it that he did not fully understand the difference between civil and criminal contempt.[26] As a result of this misunderstanding, the contempt proceedings and sentences were irregular and erroneous.

The distinctions between civil and criminal contempt have been summarized by this Court in several decisions.[27] A proceeding in criminal contempt is designed to vindicate the authority of a court; a proceeding in civil contempt gives a remedy to a litigant. The procedural and remedial differences which flow from these purposes are the ordinary distinguishing characteristics of civil and criminal proceedings.

To maintain a criminal contempt, it is necessary that the disobedience of the order be wilful. The criminal violation must be proven beyond a reasonable doubt. To maintain a civil contempt, it is necessary to show only disobedience of the order, whether wilful or not, and this only by a preponderance of the evidence. It is also necessary to show damage of an interest of the successful litigant, resulting from disobedience of the order. In a criminal contempt, the penalty is either imprisonment for a fixed term or a fine of a fixed amount which is paid to the state. A fixed term of imprisonment in a civil contempt is error since it is clearly punitive, not remedial; in a civil contempt the contemnor may be imprisoned until such time as he performs the action required by the order which he disobeyed,

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[26] "The Court [to defendants' counsel]. But if you know the exact difference between civil contempt and criminal contempt, you are the only person in the United States who does" (R191).

[27] *Michaelson* v. *United States*, 266 U.S. 42; *Gompers* v. *Bucks Stove & Range Co.*, 221 U.S. 418; *McCrone* v. *United States*, 307 U.S. 61.

and no longer. In civil contempt, a fine payable to the state may not be levied. However, if the successful litigant can demonstrate monetary damage caused by the contemnor's disobedience of the order, he may be awarded a judgment measured by the amount of his damage.

In the present case, the contempt judgment and sentence were supported by a finding of both civil and criminal contempt.

Obviously, a person who disobeys a court order may, under the criteria explained above, have committed both a criminal and a civil contempt, and may be proceeded against on either or both bases. But to combine action on both bases in a single proceeding is clearly irregular. It is, also, as prejudicial to a defendant as it would be to combine in one proceeding a civil action for the tort of battery and a criminal action for the crime of assault. The defendants were particularly prejudiced in the sentences by this combination of proceedings. The fines levied were greatly excessive for the purpose (which would be the only legitimate one in a criminal contempt case) of vindicating the court's dignity, and the court clearly had in mind that the amount of the fine was to be based on the fancied injury to the public.

As a civil contempt the procedure and the penalty cannot be sustained because the government failed to show compensable damage, because the amount of the fine was not computed on any basis of compensation for injury, and finally because it was not awarded as a civil judgment but was levied as a criminal fine.

As a criminal contempt the judgment cannot be sustained because: (1) the notice of hearing did not, contrary to Rule 42(b) of the Federal Rules of criminal procedure, describe the contempt as criminal; and (2) the penalty levied was not for the crime of offending the court's dignity but for an imagined "crime", not in the statutes, of harming the public by a coal strike.

The Court's confusion as to the purpose of the contempt proceeding appears throughout the record. On the one hand, the court repeatedly asserted that the temporary restraining order was issued only to protect its jurisdiction and to enable the parties to the dispute to discuss it with the court (R131, 136, 204, 172-3). On the other hand, it indulged in comment about society's right to protect itself from hunger, starvation and cold (R126), found that irreparable injury had resulted to the entire public (R322), and described the strike as "evil, demoniac, monstrous" and "a threat to democratic government itself" (R328), all this without having had either occasion or opportunity to pass on the merits of the strike or its provocation. The extravagantly large sentences, it is clear from these utterances, were levied as punishment for this fancied threat to society, not for a contempt of the court.

B. The preliminary injunction was granted without a hearing.

At the close of the trial for contempt, the court entered a preliminary injunction without any hearing. This was gross error.[28] The trial for contempt could not supply the place of such a hearing since it did not involve the wholly different issues[29] which relate to granting preliminary injunctions.

In connection with our earlier remarks as to bias, it becomes pertinent to observe that it was only with difficulty that government counsel restrained the court from issuing a final injunction (R322).

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[28] *Cf.* requirement in Rule 65(b), Federal Rules of Civil Procedure, that a motion for a preliminary injunction be set down for hearing at the earliest possible time if a temporary restraining order is issued.

[29] See Cyc. Fed. Proc. (2d ed. 1944) 6131.

C. Other instances of bias and confusion.

The record contains numerous other instances of confusion and bias on the part of the court below. These in themselves vitiate the orders entered, and particularly the contempt judgment and sentence, which were criminal in nature. Thus while the preliminary motion to discharge the rule to show cause was being argued, and before the introduction of any evidence on the issue of whether a contempt had been committed, the court characterized union counsel's argument that the Norris-LaGuardia Act applied in suits by the government, as follows (R126):

> Mr. Padway, you may be right, but what you are unconsciously contending is this: That when society itself endeavors to protect itself from hunger, starvation, cold, a letting down of production and unemployment, social disintegration, it is engaged in a labor dispute. You may be able to vindicate that position, but that is what you are contending now.

It is submitted that this remark shows that the existence of guilt and of degree of culpability were prejudged. Furthermore, this and other vehement characterizations of the strike, already referred to, demonstrate that the court could not adjudicate the narrow contempt issue before it and impose sentence free of a bias based on an opposition to the coal strike.

Other illustrations of hostility to the defendant or of confusion include: (1) the court's exaggerated observation that it would be "anarchy" if a person could with impunity disregard one of its temporary restraining orders (R145); (2) the confusion as to what issues were being tried, contributed to by the setting down of the contempt hearing

for the same hour that had been previously set for the hearing on the motion for the preliminary injunction (R61, 73); (3) the court's contention that the temporary restraining order did not prevent the miners from striking because it did not so understand the order (R172-3); (4) the court's colloquy with the defendant Lewis (R326-7); (5) the court's concern over the routine step of a stay of execution of judgment on filing a bond pending appeal (R311-3); (6) the excessiveness of the fine coupled with the court's remark that the union would be destroyed if necessary to the preservation of the Republic (329).

CONCLUSION.

We have demonstrated, we believe, that the orders entered below should be reversed and the sentences vacated for statutory and constitutional reasons and for flagrant error. With all deference, we suggest that the District Court was clearly influenced by the hysteria which surrounded the coal strike.

It is unfortunately true that frequently in the history of the American labor movement, from the time when the courts held early efforts at unionization to be criminal conspiracies at common law, the men who work with their hands have had to combat the judiciary's opposition to their efforts to better their lot. Even when labor managed to obtain legislation to protect it from oppression by the judiciary, it found too often that legislative victories were nullified by judicial construction. We pray that in the in-

stant case this situation will not be repeated and that the Court will give full weight to the clear intent of Congress.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

Nos. 759, 760, 781, 782, 811

THE UNITED STATES OF AMERICA,
Petitioner-Respondent

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA,
Respondents-Petitioners

APPLICATION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE ON BEHALF OF THE CONGRESS OF INDUSTRIAL ORGANIZATIONS.

LEE PRESSMAN,
General Counsel,
EUGENE COTTON,
FRANK DONNER,
Assistant Counsel,
Congress of Industrial Organizations.

IN THE

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APPLICATION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE ON BEHALF OF THE CONGRESS OF INDUSTRIAL ORGANIZATIONS

APPLICATION FOR LEAVE TO FILE BRIEF

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The Congress of Industrial Organizations prays for leave to file a brief as amicus curiae in the above-entitled cases. The applicant has filed with the clerk the written consent of counsel for the United Mine Workers and John L. Lewis, and has also filed a letter from counsel for the government advising that "the United States interposes no objection to the filing of such brief", "provided that the Court is agreeable to that action." The applicant believes that this letter is sufficient to meet Rule 27(9) of the Court, but makes this application in the event it is mistaken.

INTEREST OF PARTIES FILING THIS BRIEF

Issues of law raised by the instant case are of the most profound significance to the future of the labor movement in

this country. We believe for reasons fully stated in the accompanying brief that the decision below constitutes a critical departure from federal labor policy. We believe that the entire proceeding below rests upon a serious misinterpretation of the Clayton and Norris-LaGuardia Acts and of the court's powers under present federal policy in connection with labor disputes. For these reasons, and because of the importance of these cases as precedents, the Congress of Industrial Organizations requests leave to file a brief as amicus curiae.

BRIEF

On November 18, 1946, the court below issued a restraining order in the instant case. Thereafter on November 21, 1946, the District Court issued a rule to show cause why defendants should not be punished for contempt of court, and on December 3, 1946, after trial on the issues raised by the rule to show cause, the court below found the United Mine Workers of America and John L. Lewis, individually, guilty of both civil and criminal contempt. On December 4, 1946, fines were imposed of $3,500,000 on the labor organization defendant and $10,000 on John L. Lewis. On the same day, December 4, the court below issued a temporary injunction imposing the same restraints contained in the original temporary restraining order.

It was the contention of the Government, a contention adopted by the court below, that neither the Norris-LaGuardia Act nor the Clayton Act applies to the instant case and that even if these statutes did apply they would not prevent the punishment for contempt.

I. THE CLAYTON ACT AND THE NORRIS-LaGUARDIA ACT PLAINLY APPLY TO THIS PROCEEDING.

A. This proceeding exhibits all of the evils of "government by injunction" to which the Clayton and Norris-LaGuardia Acts were addressed. Included within those evils was the resort to injunctions by the Executive to crush national strikes.

From about 1893 until the passage of the Norris-LaGuardia Act in 1932, there developed in this country a pattern in con-

nection with the use of the labor injunction in industrial disputes.

This pattern[1] exhibited certain fixed and identifiable characteristics:

1. Initially injunctions were sought in labor matters as ancillary proceedings to receiverships. Because the proceeding was originally in *gremio legis* it was a relatively simple matter for a chancellor to issue injunctions ostensibly for the purpose of protecting the subject matter of the legal proceeding.

2. Restraints were issued by judges *ex parte*, without notice and hearing.

3. Proof was made by affidavit.

4. Because of the highly fluid character of labor disputes the delay involved in testing even a temporary order in itself severely injured the exercise by workers of the right to strike and picket. The device of preserving the *status quo* in effect served to neutralize the exercise by workers of basic rights.

5. On the basis of such proof by affidavit injunctions were issued against large groups of unnamed individuals.

6. These orders embodied not only negative restraints but mandatory commands as well.

7. The scope of the injunction frequently was such as to embrace prohibitions upon free speech and upon the act of striking itself.

8. The restraints were freely issued and in many instances embodied the partisan phraseology of counsel.

9. Punishment for contempt was freely imposed by the same judge who issued the injunction or order.

10. The punishments involved were in most cases quite arbitrary and wholly unrelated either to the civil or criminal contempts alleged.

11. The effect of this process was to deny a single group of our people, namely, workers and their leaders, the right to trial by jury in connection with criminal proceedings.

12. So great and arbitrary were the punishments as to con-

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[1] It is most fully described in Frankfurter and Greene, THE LABOR INJUNCTION (New York, 1930) See also Witte, THE GOVERNMENT IN LABOR DISPUTES (New York, 1932), chs. V and VI.

stitute an *in terrorem* deterrent to the exercise by workers and their labor organizations of their rights.

13. The proceedings were conducted in an atmosphere of strong feeling and prejudice which seriously jeopardized the detachment and objectivity which ought to prevail in a courtroom and to inform a legal proceeding.

14. All of the evils listed above were not peculiar to proceedings involving private employers. They were prominently identified with cases in which the executive resorted to the injunctive remedy.

Virtually every unwholesome aspect of the injunctive process described above was duplicated in the instant proceeding. Thus, upon a questionable equity basis an injunction was sought by the Government. It was sought allegedly as ancillary to a legal proceeding. It was issued without notice or hearing and upon the basis of affidavits. It forbade striking and an exercise by workers and their leaders of rights guaranteed by the Constitution.

The contempt punishments were imposed by the same judge who issued the restraining order. Enormous and arbitrary fines were levied because of asserted civil and criminal contempts. However, no effort was made to allocate the fines to the manner and extent of the contempt or to apportion the fines as between the alleged criminal and civil contempts. The proceedings were conducted in an atmosphere of strong feeling which the judge fully shared. His conduct of the trial betrayed a bias which in many respects is an exaggerated counterpart of the attitude displayed by American judges during the days in which the accretion of the injunction evil assumed a pattern to which the Clayton and Norris-LaGuardia Acts were directed.

The evils of "government by injunction" were dramatized by cases in which the Government itself played an outstanding part as plaintiff.[2] In those cases in which the Government

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[2] The best summary of the role of the Department of Justice in labor injunctions appears in Cummings and McFarland, FEDERAL JUSTICE (New York, 1937), pp. 462-463. See also Chafee, THE INQUIRING MIND (New York, 1928), pp. 198-216; Frankfurter and Greene, *op. cit.*; Berman, LABOR AND THE SHERMAN ACT (New York, 1930); Lindsey, THE PULLMAN STRIKE (Chicago, 1942), Chs. I, VIII, XII.

sought injunctions and in which equity relief was claimed because of some injury to the interests of the Government, the evils of "government by injunction" were reproduced in an exaggerated fashion.

The intervention of the Government made of the injunction an even more oppressive weapon. This was so because the normal demoralization consequent upon the intervention of the federal judiciary in labor disputes was emphasized when the executive took a hand as well. Frequently, these cases were conducted in at atmosphere of potential treason and disloyalty; the strikes involved were made to appear as insurrections against the sovereign. Frequently, the injunctions themselves were the prelude to the use of federal troops and to the threat of their use. Thus employers involved even in private disputes sought to clothe themselves with some form of governmental status which might serve as a basis for directing against the union of their employees the full repressive force of the Government itself.

Finally, the injunction was used more oppressively where the Government sought the injunction because the Government strategically picked that forum most sensitive to its position and most favorable to its legal theory.*

What we have been saying up to this point amounts to this: The entire history of the injunction evil is dominated by the role of the executive of the Federal Government in obtaining injunctions. The injunctions which the Federal Government obtained were more oppressive in character and dramatized the evils of injunctions in general.

The movement to eliminate injunctions as a weapon in industrial conflict was not merely a movement to deprive private employers of that weapon. So to view it would be to ignore the entire political character of the struggle against injunctions and would be to disregard some of the most bitter pages of our labor history.

It is our view that government activity in connection with

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*This abuse finds its most graphic illustration in the Wilkerson injunction obtained by Attorney General Daugherty in the *Railway Shopmen's* case, 283 Fed. 479, 286 Fed. 228, 290 Fed. 978. See Frankfurter, LAW AND POLITICS (New York, 1939), pp. 220-221.

labor disputes prior to the Clayton Act and the Norris-La-Guardia Act was of such a character as to make inescapable the conclusion that these Acts were intended to apply to the Government and that the abuse of equity jurisdiction which gave rise to these statutes was an abuse which the attorneys-general, the executive, had sponsored and popularized. The phrases "government by injunction" and "federal intervention in labor disputes" did not confine their objection merely to the role of the federal judiciary but included as well the role of the executive. The participation of the executive in the abuse which the Clayton and Norris-LaGuardia Acts sought to cure has a long genealogy of substance.

Injunctions at the instance of Government itself were used in labor matters from the beginning of the period when this weapon became prominent.

As early as 1892, two years after the passage of the Sherman Act, Attorney General Miller directed the District Attorney at New Orleans to institute a proceeding under the Sherman Act in connection with a draymen's strike in New Orleans. Just at the time when the draymen's union reached a compromise with the employers and the strike was being terminated, the District Attorney instituted suit against the Workmen's Amalgamated Council which was the organization conducting the strike. It was the hope of the District Attorney to secure an injunction which would prevent future strikes. His theory was that the organization remained a potential menace to interstate commerce even though the strike had long since been terminated. Three months later the injunction was granted, the judge holding that the mere termination of the strike was no basis for staying the hand of the court.[4]

This injunction was an outcrop of the movement by the Armies of the Commonweal in 1893 in their march on Washington. The marchers in the Commonweal armies created disturbances in connection with the railroad system. Many of the railroads affected were in bankruptcy and receivers had been appointed by the federal courts. Federal judges met this situation by issuing injunctions to protect the railroads from

[4] *U. S. v. Workers Amalgamated Council*, 54 Fed. 994 (1893), aff'd. 57 Fed. 85 (1893).

interference. The marshals named to enforce these orders appealed to Attorney General Olney who issued instructions that wherever necessary they should request military aid. They were also urged by Olney wherever possible to join with the federal judge and district attorney to obtain injunctions and to make their representation for troops where injunctions were violated. The procedure proposed was followed and regular soldiers were employed to put a stop to further violations of the injunctions.

In fourteen states the Department of Justice was called upon for aid to enforce injunctions and wherever necessary the assistance of federal troops was promptly invoked. The technique proved effective. Under the guise of enforcing court process federal troops could be sent to protect railroads in receivership. During the 90's this procedure was utilized with great frequency.

The receivership injunctions were granted upon the theory that the disturbances involved constituted an interference with the enforcement of the Interstate Commerce Act and with public rights.

Where railroad property was not in receivership, as in the Pullman strike, a new theory, that of political prerogative, was devised to meet the situation.*

The injunctive warfare during the Pullman strike of 1894 was not confined merely to the Debs injunction. The opening guns in the injunctive warfare were a series of receivership injunctions which were granted by federal judges.*

The Debs injunction was issued on July 2nd and differed from its predecessors primarily in its omnibus scope. It was promptly named the "omnibus" injunction. Of this injunction one writer has said:

> "For thoroughness and completeness, this writ left nothing to be desired. It was an ingenious weapon, whose terrible potentialities in the hands of a determined judi-

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* Accounts of the Commonweal movement and of the issuance of receivership injunctions to crush it appear in Cummings and McFarland, *op. cit.*, 439; Lindsey, *op. cit.*, 13-14; E. P. Oberholtzer, A HISTORY OF THE UNITED STATES SINCE THE CIVIL WAR (New York, 1937), Vol. V, 290-297.

* See Lindsey, *op. cit.*, 160-161.

ciary were soon revealed to the amazement and anger of labor."[7]

The New York Times[8] referred to it as a "Gatling gun on paper" and as a

> "veritable dragnet in the matter of legal verbiage, one of these peculiar instruments that punishes an individual for doing a certain thing, and is equally merciless if he does not do it, so it is difficult to understand how the strikers can maintain their present policy and at the same time evade its operation or escape its influence."

The New York World[9] said:

> "So outrageous a stretch of federal power was not attempted during the Civil War, when amid the tumult of arms laws were silent."

Lawyers were deeply troubled not merely by the rapid expansion of pre-existing injunction concepts, but also by the resort in the contempt proceeding to wholly new theories of equity jurisdiction. Thus, in a paper read before the American Bar Association, one student stated:[10]

> "The great 'Pullman boycott' and 'sympathy strike' of the American Railway Union have come and gone. The strike has passed into history, but what an intricate mass of juridical problems it has left behind it to be solved. Of these, none are more vital or more far-reaching in their consequences than those which envelop the court of equity.
>
> "The Attorney-General of the United States, acting for the United States in the exercise of its sovereignty as a nation, has sued out injunctions in nearly every large city west of the Alleghany Mountains.
>
> "Injunction writs have covered the sides of cars, deputy marshals and Federal soldiers have patrolled the yards of railway termini and chancery process has been executed by bullets and bayonets. Equity jurisdiction has passed from the theory of 'public rights' to the domain of political prerogative. In 1888, the basis of jurisdiction was the protection of the right of civil property; in 1893, it

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[7] Lindsey, *ibid.*, 162.

[8] July 5, 1894.

[9] July 4, 1894.

[10] Allen, "Injunctions and Organized Labor", 28 American Law Rev. 828.

was the preservation of public rights; in 1894, it has become the enforcement of political powers." [11]

This injunction, the use of troops which followed on its heels, and the subsequent contempt proceedings, constituted the most important single factor in the awakening of labor to the evils of government by injunction. It is fair to say that it was the Debs injunction which brought the American labor movement into politics. We find it impossible to believe that the Government now can seriously urge that restraints of the type made notorious by the *Debs* case are not reached by the Clayton Act and the Norris-LaGuardia Act.

Subsequent to the Debs injunction and prior to World War I the Department of Justice continued to seek and obtain injunctions in labor matters. See Berman, LABOR AND THE SHERMAN ACT, Appendix C.

The awareness that something must be done to prevent the Debs type of injunction was heightened by the injunction issued by Judge Anderson in the *Hayes* case[12] and by Judge Wilkerson in the *Railway Shopmen's* case.[13]

The Hayes injunction bears a strong underlying similarity to the situation involved in the instant case. In the middle of October of 1919 the United Mine Workers Union issued a strike call to the union miners in all the bituminous coal fields to take effect at midnight on October 31. Attorney General Palmer on October 31 started a suit in equity in the United States Court in Indiana and on the same day obtained from Judge Albert B. Anderson a restraining order against specified officers of the union commanding them among other requirements:

> "to desist and refrain from doing any further act whatsoever to bring about or continue in effect the . . . strike . . . ; from issuing any further strike orders . . .; from

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[11] Attacks on the Debs proceedings ranged from strictures upon the scope of the injunction (Gregory, 11 Harvard Law Review 487) to attacks upon the abuse of contempt process (Lewis, "A Protest Against Administering Criminal Law by Injunction—The Debs Case," 33 Am. Law Reg. (N.S.) 879).

[12] *U. S. v. Frank J. Hayes, et al.* (D. Ind. November Term, 1919) Equity 312, unreported.

[13] *U. S. v. Railway Employes Department*, 283 Fed. 479 (N.D. Ill.). See also, 286 Fed. 228 (N.D. Ill.) and 290 Fed. 978 (N.D. Ill.)

> issuing any messages of encouragement or exhortation to striking miners . . . to abstain from work and not to return to the mines . . .; and from . . . taking any steps to procure the . . . distribution . . . of . . . strike benefits, and from conspiring . . . with each other or any other person to limit the facilities for the production of coal, or to restrict the supply or distribution of coal. . . ."

The order, as the order involved in the instant case, prohibited the strike. After a hearing on November 8, the order was continued as a temporary injunction *pendente lite* with a mandatory provision for the recall of the strike before the end of the third day following. An order of the union officials for that purpose was subsequently approved by the court. This injunction, like the Debs injunction, elicited wide-spread criticism and contributed to the movement for a law eliminating injunctions from industrial disputes.

Finally, the 1922 Railway Shopmen's injunction served further to create a public atmosphere which favored closing the door of federal courts to seekers after injunctions, especially when such a seeker was the Attorney General.

Writing in *Collier's* magazine in 1922, Whiting Williams said:

> "The so-called Daugherty injunction has done more than anything else in a generation to arouse in the minds of hundreds of thousands of workers a growing doubt as to whether our Government can be trusted to play fair."

The entire struggle against the labor injunction was a struggle permanently to eliminate from the administration of justice in labor disputes the theories of Attorneys-General Olney,* Palmer and Daugherty.

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* To Olney, more than to any other single individual, we are indebted for the theory that "sovereignty" may be employed for strike-breaking purposes in injunctions. Olney was not content with his considerable successes prior to 1894 in connection with the receivership injunctions. He bequeathed to his successors the theory that the legal foundation for Government relief in a case of this sort is "the indisputable jurisdiction of a court of equity in the case of a public nuisance and its incontrovertible right to restrain the commission of such public nuisance when threatened and when such commission would work a public injury." Quoted from the Olney papers by Cummings and McFarland, *op. cit.*, p. 442. Alfred Russell, attorney for the Wabash Railroad, thus congratulated Olney: "To have suppressed a rebellion, to have practically opened a new development of the Principle of Equity . . . is glory enough for any one Attorney General." Quoted from the Olney papers by Lindsey, *op. cit.*, p. 324.

The war upon the labor injunction was more than a broadside attack upon an equity device which had been subverted for anti-social purposes. It was a conflict with a theory of government which in the minds of those who pressed for legislation embraced the resort to the federal executive power for the purpose of breaking national strikes. For it was in those strikes in which the most repressive orders were issued: it was in those strikes in which the injunctive evil found its strongest expression.

To suggest, as the Government does, that the Debs, Hayes, and Railway Shopmen's injunctions were intended to be left untouched by the Clayton and Norris-LaGuardia Acts is seriously to misread our social and economic history. These injunctions were employed for the bold and unconcealed purpose of smashing strikes. These injunctions were almost unique in that their impact was upon the act of striking itself in large national labor disputes.[11] The second paragraph of Section 20 of the Clayton Act and Section 4 of the Norris-LaGuardia Act prohibiting restraints upon the act of striking unmistakably owe their origin to these three strike-breaking injunctions. To assert today that these cases retain their vitality is to ignore the very essence of the anti-injunction struggle in this country.

B. The legislative history

The agitation in Congress for an alteration of the federal injunction policy was a constant and continuing one. The hearings before congressional committees are, as has been pointed out to this Court, studded with references to the activities of the Government itself in connection with the injunction evil.

It is worthy of note that the Committee Report accompanying the bill which became the Clayton Act specifically refers

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[11] "For almost a generation and a half, from the 1890's to the early 1930's, it may be said that the power of the courts was invoked to assist in defeating most of the important strikes—among them, the Pullman strike of 1894, the coal strike of 1919, the shopmen's strike of 1922—and only a smaller proportion of the relatively less important ones." Millis and Montgomery, ORGANIZED LABOR (New York, 1935), p. 631.

to the *Debs* case and the criticism which arose from it.[16] Likewise, the Minority Report states:

> "Among the acts which the second paragraph of section 266C declares shall not be restrained is to prohibit any person or persons to terminate any relation of employment, or from ceasing to perform any work or labor or from recommending or persuading others by peaceful means so to do; of peacefully persuading any person to work or to abstain from working, or from ceasing to patronize or employ any party to such dispute or from recommending, advising, or persuading others by peaceful means so to do; etc.
>
> "While many of these acts are in themselves entirely harmless and would never be enjoined by any court, yet under certain circumstances the same acts might become a weapon of lawless and destructive industrial warfare demanding the protection of the courts, this section would prevent the issuance of the injunction in the Debs case (In re Debs, 158 U. S. 564. . . .)" [17]

The legislative history of the Norris-LaGuardia Act indicates, as the Mine Workers' brief shows, that Congress was determined to prevent the recurrence of such injunctions as the Debs injunction, the Hayes injunction and the Railway Shopmen's injunction. The rejection of the Beck and Blanton amendments plainly indicates a determination to this effect.

Similarly, the express provision in Section 10(h) of the National Labor Relations Act for amendment of the Norris-LaGuardia Act to remove limitations on federal equity jurisdiction for the purpose of enforcing Government orders in Labor Board cases conclusively shows that Congress believed that in the Norris-LaGuardia Act it had precluded the Government from obtaining injunctions in labor disputes.

Indeed, every attempt by Congress subsequent to the Norris-LaGuardia Act to legislate with reference to Government injunctions is marked by the same belief that in order to do so an amendment to the Norris-LaGuardia Act is required. As the Mine Workers' brief demonstrates, Congress flatly excluded resort to injunctions as a sanction for enforcement of the War Labor Disputes Act. Such an exclusion demon-

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[16] H. Rept. No. 612, 62d Cong., 2nd Sess., p. 28.

[17] *Ibid.*, pt. 2, p. 20.

strates not only a congressional recognition that the Norris-LaGuardia Act applies to Government-sought injunctions but also, more directly, it demonstrates that where there has been a seizure under the War Labor Disputes Act as here Congress intended that in the event of a violation of the Act of the type here involved a criminal prosecution and a criminal prosecution alone would lie. To urge that the court below could enjoin a violation of the War Labor Disputes Act, as does the Government, is to ignore the fact that the Constitution vests the war power in Congress and not in the courts.

As recently as May of this year the President in connection with the railroad crisis sponsored a bill (H. R. 6578) entitled: "An Act to provide on a temporary basis during the present period of emergency for the prompt settlement of industrial disputes vitally affecting the national economy in the transition from war to peace." This bill, which was drafted by the Department of Justice under the direction of the Attorney General, in effect constituted an extension of the War Labor Disputes Act. It provided that where a plant has been seized the President may by proclamation declaring an emergency fix wages.

Section 4 of the bill expressly provided, in part, that in the event of a strike in a property seized by the Government under the Selective Service Act, it is the obligation of those engaged in the strike to return to work.

The bill, in this connection, contained two significant changes in the terms of the War Labor Disputes Act. In the first place, it deleted the provision in the War Labor Disputes Act (contained in Section 6(a) thereof) which provides that "No individual shall be deemed to have violated the provisions of this section by reason only of his having ceased work or having refused to continue to work or to accept employment."

In the second place, the bill implemented the obligation to terminate a strike by a provision amending the Norris-LaGuardia Act. This provision (section 5 of H. R. 6578) provided as follows:

> "The Attorney General may petition any district court of the United States, in any State or in the District of Columbia, or the United States court of any Territory

or possession, within the jurisdiction of which any party defendant to the proceeding resides, transacts business, or is found, for injunctive relief, and for appropriate temporary relief or restraining order, to secure compliance with section 4 hereof or with section 6 of the War Labor Disputes Act. Upon the filing of such petition, the court shall have all the power and jurisdiction of a court of equity, and such power and jurisdiction shall not be limited by the Act entitled 'An Act to amend the Judicial Code, to define and limit the jurisdiction of courts sitting in equity, and for other purposes,' approved March 23, 1932. Notice or process of the court under this section may be served in any judicial district, either personally or by leaving a copy thereof at the residence or principal office or place of business of the person to be served. Petitions filed hereunder shall be heard with all possible expedition. The judgment and decree of the court shall be subject to review by the appropriate circuit court of appeals (including the United States Court of Appeals for the District of Columbia) and by the Supreme Court of the United States upon writ of certiorari."

It seems plain that it was the Government's view prior to the instant proceeding that an injunction against striking in a seized plant would not lie without an amendment of the Norris-LaGuardia Act."

C. Theories of sovereignty or sovereign function could not give the court below jurisdiction.

The Government and the court below have drawn from the concept of sovereignty three arguments:

1. It is argued that the sovereign or the Government cannot be bound by legislation unless expressly named. Hence, the argument runs, the Norris-LaGuardia Act does not apply to the Government.

2. The contention is made that such cases as *U. S.* v. *American Federation of Musicians*" holding the Norris-LaGuardia Act applicable in cases in which the Government is the complainant do not control the instant situation because

" One of the major grounds of objection to H. R. 6578 was precisely its amendment of the Norris-LaGuardia Act. See Congressional Record, Second Session, pp. 6169, 6170.

" 318 U. S. 741, aff'g. 47 F. Supp. 304 (N. D., Ill.).

these cases involve a dispute between private employers and their employees. The argument is made that we are here dealing with a sovereign function and that for this reason there is absent a "labor dispute necessary to call the Norris-LaGuardia Act into play." For, it is contended, "the sovereign in the exercise of its functions can at no time be held to be engaged in a labor dispute with private persons" (R. 57).

3. Finally, the contention is made that there is "a doctrine of long standing that the federal government is entitled to judicial protection of its rights lawfully to exercise its sovereign functions without interference and obstruction." In support of this statement the only cases cited are the *Debs*, *Hayes* and *Railway Shopmen's* injunction cases (R. 55).

We will consider each of these arguments in turn.

1. The court below held that the Norris-LaGuardia Act does not bind the Government because the Government is not expressly mentioned therein. The rule with respect to when a statute is to be read as applicable to the Government is of course merely a rule of statutory construction.[9] We do not think that formulas such as, "The king is not bound by any act of Parliament", or metaphysical elaborations of concepts of sovereignty can overcome either the solid history upon which our anti-injunction legislation rests or its unambiguous language.

The Norris-LaGuardia Act plainly states, "No court of the United States shall have jurisdiction . . ." etc. The prohibition in the Clayton Act is similarly unequivocal. Section 20 of that Act provides, "no restraining order or injunction shall be granted." As this Court has held:

> "Thou shalt not . . . is usually rendered as to forbid and we think here it was employed without subtlety or contortion and in its usual sense."[10]

Since the statute deals with subject matter and not with parties we would suppose that, even absent the statutory background, the United States could not be read out of the law. This is particularly true here, since the Clayton Act and the

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[9] See *Green* v. *U. S.*, 9 Wall. 655, 658.

[10] *Conn. Power & Electric Co.* v. *Federal Power Commission*, 324 U. S. 515, 532.

Norris-LaGuardia Act are express limitations on governmental power.[*] These Acts constitute limitations upon the authority of one of the branches of the Government, namely, the judiciary. It would hardly be reasonable to suggest that Congress flatly imposed uniform restraints upon the judiciary but that it intended to leave in the hands of the executive the power to nullify those restraints. Congress in the exercise of a power which is exclusive deprived the court below of jurisdiction. The executive branch cannot restore what Congress has taken away.

2. Moreover, if it is true that the United States is bound by the Norris-LaGuardia Act in cases involving labor disputes affecting private employers and their employees, then it cannot be true as the Government contends that the Norris-LaGuardia Act does not apply to the United States for reasons of statutory construction. The United States is or is not bound by the Norris-LaGuardia Act. If it is bound by the Norris-LaGuardia Act as the cases hold and as the Government has conceded in its brief in *United Brotherhood of Carpenters and Joiners* v. *U. S.*, Nos. 9, 10, 11, 12 and 13, this Term, page 6, then the only basis for escaping the reaches of the statute is the fact that there is no labor dispute here.

Manifestly, however, a dogma that the "sovereign" cannot be held to be engaged in a labor dispute with private persons does not answer our problem. Our problem is conclusively answered by the Norris-LaGuardia Act which defines "labor dispute" in Section 13(c) to include "any controversy concerning terms or conditions of employment . . . regardless of whether or not the disputants stand in approximate relation of employer and employee."

It would be an imposition on this Court to argue that what is involved here is a labor dispute squarely within that definition. Indeed, it seems clear this case not only "involves" a labor dispute between the government and the miners but also "grows out of" a labor dispute between the miners and the mine operators. What is vital here, however, is that ap-

[*] If there were in addition a privately administered court system in this country then an issue might arise as to whether the term "No court" excludes the Federal courts.

plicability of the Norris-LaGuardia Act does not turn upon the status of the parties to a dispute but merely on the existence of the dispute.

In the preamble to the Act, Congress charted the area in which the disputes which it sought to immunize from injunctive action might arise. The contest in which this dispute arose falls well within the area contemplated by the Norris-LaGuardia Act.

The miners involved in this dispute are of course employees. They are not employees of the Government. They are employees of the mine owners who continue to derive profit from the labor of the miners. Moreover, we are dealing here with employees of corporate and organized employers who are seeking to engage in the concerted activities characteristic of those activities for the protection of which the Norris-LaGuardia Act was passed. Sec. 2, Norris-LaGuardia Act. The Government does not nor could it contend that the miners by virtue of the seizure lost their right to protection of the National Labor Relations Act. It is submitted that the National Labor Relations Act must be read in *pari materia* with the Norris-LaGuardia Act. They are integrated parts of a single federal policy. These Acts together provide a code to safeguard the freedom of association, freedom of self-organization and freedom to engage in concerted activity for the purpose of collective bargaining or other mutual aid or protection of workers subject to federal jurisdiction."

The War Labor Disputes Act, pursuant to which the seizure was made, expressly provides that the definitions of the various basic terms in that Act are to have the same meaning as in Section 2 of the National Labor Relations Act. Section 7(a)(2) of the War Labor Disputes Act expressly provides that the National War Labor Board (later the Wage Stabilization Board) is to decide disputes in accordance with the provisions of the National Labor Relations Act.

Congress in the War Labor Disputes Act did not intend to withdraw from employees in seized enterprises the benefits of

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" Compare Sections 2 and 3 of Norris-LaGuardia Act with National Labor Relations Act. See also *Republic Steel Corp.* v. *N.L.R.B.*, 107 F. (2d) 472, 479 (C.C.A. 3).

the federal labor policy. They were to enjoy the same rights as they had enjoyed prior to seizure. This precise issue was recently passed upon by two Federal Circuit Courts of Appeal. In *Glen Alden Coal Co.* v. *National Labor Relations Board* 141 F.(2d) 47 (C.C.A. 3), a seizure under the War Labor Disputes Act was advanced as a defense to non-compliance with a National Labor Relations Board order. In rejecting this defense the court held:[*]

> "The President of the United States, acting pursuant to authority vested in him by the Constitution and laws of the United States, in particular the War Labor Disputes Act,[**] by the Executive Order of November 1, 1943, No. 9393, authorized and directed the Secretary of the Interior '. . . to take immediate possession, so far as may be necessary or desirable, of any and all mines producing coal in which a strike or stoppage has occurred or is threatened, . . . and to operate or arrange for the operation of such mines in such manner as he deems necessary for the successful prosecution of the war, and to do all things necessary for or incidental to the production, sale, and distribution of coal.'
>
> "The Executive Order goes on to provide, 'The Secretary of the Interior is authorized and directed to maintain customary working conditions in the mines and customary procedure for the adjustment of workers' grievances. He shall recognize the right of the workers to continue their membership in any labor organization, *to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection,*[***] provided that such concerted activities do not interfere with the operation of the mines.
>
> " 'The Secretary of the Interior is further authorized and directed to offer to the duly constituted representatives of the workers' own choosing a contract or contracts governing the terms and conditions of employment for the period of the operations of the mines by the govern-

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[*] The footnotes in the quotation which follows are the court's.

[**] War Labor Disputes Act, c. 144, Public Law 89, 1st Sess. 78th Congress, 50 U.S.C.A. Appendix, s. 1501 et seq. See United States Code Congressional Service, 1943, No. 4, 162 et seq.

[***] It will be observed that the words which we have italicized are identical with those of Section 7 of the National Labor Relations Act, 29 U.S.C.A. s. 157.

ment, in accordance with the opinion of the National War Labor Board in the matter of *Illinois Coal Operators Association* and *United Mine Workers of America* of October 26, 1943, and with such further directives as may be given by the War Labor Board. When any such contract has been agreed upon, the Secretary of the Interior shall apply under section 5 of the War Labor Disputes Act to the National War Labor Board for the approval of such contract and such changes in the terms and conditions of employment as may be authorized therein."

"On November 1, 1943, the Secretary of the Interior took possession of the coal mines, including the properties of Glen Alden, by virtue of the authority vested in him by the President of the United States by the Executive Order of November 1, 1943. Upon November 2, 1943, the Secretary of the Interior issued a directive designating the presidents of the respective mining companies as 'Operating Manager for the United States' for each and all of the mines. The directive states, inter alia, 'The Regulations for the Operation of Coal Mines Under Government Control, as amended (8 F. R. 6655, . . .) which I have issued heretofore, will be applicable to the present period of Government possession, and operation of your mines should be conducted in accordance with the provisions of those Regulations.' The Regulations for the Operation of Coal Mines Under Government Control promulgated by the Secretary of the Interior at 8 F. R. 6655 are particularly pertinent." Section 24 expressly

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[4] See United States Code Congressional Service, 1943, No. 7, 5-90 et seq.

[5] These Regulations provide in part as follows:

" 'Section 23 (b). *Collective bargaining.*—In accordance with the terms of Executive Order No. 9340, the customary machinery for the adjustment of workers' grievances shall be maintained in all mines and the right of the workers shall be recognized to continue their membership in any labor organization, to bargain collectively through representatives of their own choosing, and to engage in collective activities for the purpose of collective bargaining or other mutual aid or protection, provided that such concerted activities do not interfere with the operation of the mine.'

"Section 24 provides:

" 'Application of Federal and State Laws. (a) The mining companies, their personnel and their property are deemed to remain subject during the period of Government control to all Federal and State laws and to actions, orders, and proceedings of all Federal and State courts and administrative agencies. The companies are expected to meet all Federal, State and local taxes,

provides that all Federal as well as all State laws are to remain applicable to the mining companies, their personnel and their properties, as well as the actions, orders and proceedings of the Federal and State courts and administrative agencies. It is clear that the workers employed by the mining companies possess the right to bargain collectively and to engage in collective activities provided that these do not interfere with the operation of the mine. Note the provisions of the Executive Order of November 1, 1943, which we have italicized.' It is incumbent upon the Secretary of the Interior to decide whether these concerted activities by the workers in the mines will interfere with operation. The determination of this issue lies within the sound administrative discretion of the Secretary of the Interior under the regulations which he himself has promulgated. It is pertinent to note, therefore, that on November 22, 1943, the Secretary of the Interior wrote to Chairman Millis of the National Labor Relations Board in response to a letter written by Chairman Millis to him in respect to the proceedings now pending before us. Chairman Millis had directed his inquiry to the specific questions as to whether Glen Alden still possesses the right or duty to comply with the order of the controversy.' Secretary Ickes, quoting the regu-

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contributions, and assessments in the customary manner.'

"Section 17 of the Regulations provides that Operating Managers shall perform for their companies ordinary duties of management in accordance with established policies and practices so far as consistent with the regulations and instructions of the Administrator."

'" Secretary Ickes in his letter stated in part:

" 'In your [Chairman Millis'] letter of November 18 you state that in proceedings now pending before the United States Circuit Court of Appeals for the Third Circuit to enforce an order of your Board requiring the company to bargain collectively with the certified union at its Exeter shop, Glen Alden Coal Company has requested a stay of enforcement on the ground that while the property is in the possession of the Government, the Government has no power or authority to comply with the order of the National Labor Relations Board and the Board has no jurisdiction over the matter. You request a statement as to my position with respect to the company's request.'

"Referring then to sections of Regulations which we have quoted, Secretary Ickes states:

"Accordingly, despite the fact that the Government has taken possession of the mining properties, Glen Alden Coal Company remains subject to the orders of the National Labor Relations Board. I have at no time indicated that I would have any objection to compliance by the company or the Operating Manager with the Board's order.' "

lations heretofore quoted or referred to in this opinion, stated that despite the fact that the Government had taken possession of the mining properties, Glen Alden Coal Company remained subject to the orders of the National Labor Relations Board. This is a determination by the Administrator of the extent to which he has exercised the power conferred upon him by the President. Under the circumstances of the case at bar this determination is binding upon us.'

"A decree will be entered enforcing the order of the Board."

Accord: *National Labor Relations Board* v. *West Kentucky Coal Company*, 152 F. (2d) 198 (C.C.A. 6).

If seizure under the War Labor Disputes Act does not strip employees of the protection of the National Labor Relations Act in connection with their concerted activities what basis is there for giving seizure a different legal consequence in connection with the Norris-LaGuardia Act?

It seems to us that it cannot be disputed that there is here involved a labor dispute in the normal usual sense. It seems equally clear that the system of labor relations protected by the Norris-LaGuardia Act and the National Labor Relations Act is the system contemplated by Congress for employees in seized plants.

We are not here confronted with the situation in which employees not covered by the National Labor Relations Act,

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"We point out that the facts presented to the Supreme Court in the case of *Missouri Pacific R. Co.* v. *Ault*, 256 U. S. 554, 557, 41 S. Ct. 593, 595, 65 L. Ed. 1087, cited by Glen Alden, are in no wise analogous to those of the case at bar. As Mr. Justice Brandeis stated: 'By the establishment of the Railroad Administration and subsequent orders of the Director General, the carrier companies were completely separated from the control and management of their systems. Managing officials were "required to sever their relations with the particular companies and to become exclusive representatives of the United States Railroad Administration". . . . The railroad employees were under its direction and were in no way controlled by their former employers.' In the case of the mines, the right of the workers to bargain collectively through representatives of their own choosing specifically has been preserved and the Operating Managers are empowered to serve as agents of their companies. '. . . with respect to all actions which they would have been empowered to take on behalf of . . . [those companies] in the absence of Government control of . . . [their] properties.'"

such as government employees, claim the protection of the Norris-LaGuardia Act. Such circumstances would bring into play the comments of Congressmen LaGuardia and Michener upon which the Government mistakenly relies in this case. The relationship in the instant proceeding between the Government and the employees involved, insofar as the employment relationship is concerned, does not differ materially from that presented by the landmark cases, such as *Debs* and *Railway Shopmen*, to which the Norris-LaGuardia Act was addressed.

3. The Government seeks to draw from the fact of sovereignty an argument to support the jurisdiction of the court below but, as already noted, it relies on the very cases the force of which it was the purpose of the Clayton and Norris-LaGuardia Acts to destroy.

Moreover, insofar as it is urged that these cases confer equity jurisdiction on the court, such a contention is plainly erroneous. The mere fact of interference with a Government function does not in and of itself confer equity jurisdiction. The interest which is invaded must be an interest of equitable cognizance. In the *Debs* case, equity jurisdiction was found through those cases permitting the injunctive elimination of a public nuisance. It was held that the obstruction of a highway and physical interference with commerce legitimately called into play the powers of equity. In the present case no contention can be made that there had been or threatened to be physical obstruction to federal property justifying the intervention of a court of equity.

In the *Hayes* case, federal equity jurisdiction was grounded on an alleged violation of the Lever Act, a statute of 1917 to punish conspiracies to restrict the production and distribution of necessaries. In criticism of the injunction issued upon this basis by Judge Anderson in the *Hayes* case, Professor Chafee has this to say:

> "If there is one principle of equity which can be regarded as settled, it is that a crime will not be enjoined merely because it is a crime. Some other aspect of the defendant's conduct must bring the case within the established jurisdiction of chancery. The Lever Act declares violations thereof to be crimes subject to criminal penal-

ties. Not a clause makes them a ground for equitable relief.

"Consequently, the coal-strike injunction can be supported only if it was based upon the infringement of a definite federal right. The existence of such a right must remain conjectural in the absence of any written opinion from the United States District Court of Indiana. Over a century has elapsed since the greatest of chancellers declared, 'I have no jurisdiction to prevent the commission of crimes.' A conservative lawyer of today may be permitted to share Lord Eldon's doubts, and express regret that Judge Albert B. Anderson felt unable to make public the reasons which led him to differ from the foremost English advocate of law and order, who even during the disturbance of the French Revolution refused in the absence of legislative authority to strengthen the power of the government by placing the Court of Chancery at the disposal of the criminal law." *

Those strictures apply even more strongly to the instant case in view of the legislative history of the War Labor Disputes Act demonstrating the rejection by Congress of the injunctive sanction.

Finally, the Wilkerson injunction in the *Railway Shopmen's* case rests upon a jurisdictional basis wholly analogous to the *Debs* case, namely, physical interference with interstate commerce and the mails. Even if these grounds had validity today they would furnish no basis for the restraining order here involved.

It is thus apparent that the mere fact that the Government is the complainant did not serve to confer jurisdiction on the court below. The complainant did not and does not occupy such a relationship to the employees here involved as would make inappropriate to their status the rights and protections of the federal labor policy. Moreover, the status of the complainant is not different for purposes of this case than any other case in which the Government pursuant to the Constitution and laws of the United States seeks to exercise a duty.

The fact that the Government has seized the property involved herein did not endow it with a prerogative which it

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* See Chafee, "The Progress of the Law, 1919-1920," 34 Harvard Law Review 405.

lacked when the Government sued to enjoin conspiracies in restraint of commerce and was held to be barred from doing so by the Norris-LaGuardia Act.

Finally, even if the Norris-LaGuardia Act were inapplicable, the mere fact that the complainant was here the Government did not create a basis of equitable relief.

• • •

From the very beginning of the injunctive evil an attempt was made by those engaged in disputes with their employees to acquire a governmental or quasi-governmental status. The receivership injunctions rested upon the peculiar status of the receiver as an officer of the court. The long strife in the coal fields during the first quarter of this century was accompanied by a bitter and persistent attempt on the part of the coal operators to clothe their operations with some sort of government status so that strikes would create a basis for the calling forth of federal troops. A related attempt to use the concept of government or sovereignty to attack workers followed from the efforts of individuals who had secured injunctions to obtain enforcement by the Department of Justice. The theory of these requests was that "It had been the traditional function of the federal executive law officers to protect and enforce orders, decrees, judgments and process of the federal courts. Private litigants were thus relieved of responsibility and expense, and the impression was created that the government was on their side." [*]

Also integral to this entire process of obtaining state sanctions in labor relations was the historic pressure upon the Department of Justice to cooperate with federal judges issuing injunctions in criminal contempt proceedings conducted in the name of the United States.

Finally, as Cummings and McFarland point out, during the last war, "there were instances in which federal judges recognized a peculiar wartime relation between the businesses affected by labor controversies and the government itself." [*] In *Wagner Electric Manufacturing Co.* v. *District Lodge*, 252 Fed. 597 (1918), a strike to compel a company to abandon

[*] See Cummings and McFarland, *op. cit.*, 445.

[*] *Ibid.*, 453-454.

the open shop was enjoined because the company was, as the court held, "to all intents and purposes an instrumentality or agency of the government itself, created and existing under national laws." The judge, therefore, directed the marshal to appoint deputies to enforce the injunction, and the Department of Justice cooperated to the extent of authorizing the appointments.[*]

This brief summary of attempts to utilize the power of the state in order to impose repression in labor matters is not given here to challenge the good faith of the Government's seizure of the coal mines. It is given rather to indicate that while the exact relationship of the Government to the coal miners may not perhaps be precisely reproduced in other eras of our injunctive history prior to the Norris-LaGuardia Act, nevertheless relationships quite similar to that here involved were woven into the fabric of the injunction evil. We seek to point out to the Court that the labor history giving rise to the Norris-LaGuardia Act reflects not only those situations where the Government asserted its own sovereignty and sovereign rights as a basis for obtaining an injunction in its own quarrels but also those in which others were permitted to assert that sovereignty in their quarrels with workers.

Indiscriminate resort to such terms as "sovereignty" is rarely helpful in construing legal rights and relationships under our constitutional system of government and under our political traditions. We remain a government of limited powers. Nor have we ever embraced a theory which endows the state with a life independent of the people. But resort to sovereignty concepts is particularly treacherous in the field of labor relations where such concepts have historically served a questionable role.

II. THE RESTRAINING ORDER VIOLATES THE CONSTITUTION

The entire record in this case is pervaded with what can only be called a callous disregard of the procedural and constitutional rights of the defendants below. Proceedings of the

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[*] *Ibid.*

type here under review have historically raised grave constitutional questions. The court below seemed content to gloss over the problems presented by the Constitution on the basis of its own personal assurance that whatever unconstitutional implications were present in the order were being misconstrued since the court had no intention of giving the injunction an undue scope.

However, the court apparently was unaware or refused to recognize that the order was addressed to the following classes of persons

1. the defendants,
2. their agents and servants,
3. their employees and agents,
4. *all persons in active concert or participation with them* (italics ours).

These groups of persons were restrained:

(1) "from permitting to continue in effect the notice heretofore given by the defendant, John L. Lewis, to the Secretary of the Interior dated November 15, 1946."

(2) "from issuing or otherwise giving publicity to any notice that was to the effect that the Krug-Lewis agreement has been, is, or will at some future date be terminated, or that said agreement is or shall at some future date be nugatory or void at any time during the Government's possession of the bituminous coal mines."

(3) "from breaching any of their obligations under said Krug-Lewis agreement."

(4) "from coercing, instigating, inducing or encouraging the mine workers at the bituminous coal mines in the Government's possession, or any of them, or any person, to interfere by strike, slow down, walkout, cessation of work, or otherwise, with the operation of said mines by continuing in effect the aforesaid notice or by issuing any notice of termination of agreement or through *any other means or device.*" (italics ours)

(5) "from interfering with or obstructing the exercise by the Secretary of the Interior of his functions under Executive Order No. 9728."

(6) "and from taking any action which would interfere with this court's jurisdiction or which would impair, obstruct or render fruitless the determination of this case by the court."

It is our view that these restraints are repugnant to the First and Thirteenth Amendments to the Constitution.

Under Section 2 of this order it would be impossible for the union or its members to present in any effective fashion their views with respect to the validity of the Krug-Lewis agreement. The order forces the defendants to accept a legal theory which they now dispute. But it does more than that, the defendants are enjoined by the order from disputing it.

Despite the fact that the order plainly would require individuals to work if by not doing so they encouraged others to refrain from working, the court refused even to entertain an objection that this constituted involuntary servitude. It contented itself with the assertion that the miners were not involved in the case and that it would not have directed contempt sanctions against them had they refused to work (R. 178). The Constitution deals with realities." The basic reality underlying the restraining order is that some sanction beyond that laid down in the War Labor Disputes Act was necessary to compel the employees here involved to work in the mines. The Government went to the court below to obtain that sanction. To contend seriously that the right to quit work was not involved in this case is to ignore the very essence of the proceeding. It seems to us that the order cannot possibly be viewed other than as an attempt to make men work against their will.

A strike is not merely an abstract refusal to work. It is part of a complex of related activities. These activities include meetings of workers to clarify the objectives of the strike, newspaper and radio campaigns in explanation of the issues, the distribution of leaflets and other activities whereby a strike is made effective. Since the order condemns the strike it unquestionably condemns and suppresses these activities which are integral to the strike. It places upon thousands of workers a blackout of freedom of an unbelievable kind. They are not merely forced to work. They are forced to remain silent and to refrain from those constitutionally protected activities which are traditionally associated with and indispensable to a strike. *Thornhill* v. *Alabama*, 310 U. S. 88.

" *Gompers* v. *United States*, 233 U. S. 604, 610.

The order is offensive, moreover, because it requires those against whom it operates to rescind the notice terminating the Krug-Lewis agreement. The Government recognizes that this notice was in effect a strike call. The order thus forces the individuals and groups against whom it operates to tell employees to take action which the speakers themselves may be convinced is not merely wrong but against the best interests of the union. In this aspect the order presents the same obnoxious features as any oath requirement or declaration of loyalty. It punishes a union leader if he fails to solicit a course of action which he deems to be detrimental to the interests of the union. The order compels the duly elected representative of a voluntary unincorporated association to violate his oath of office. It tells him to act as a strike-breaker; to do that which he may deem fatal to the best interests of the organization which he is charged with leading and protecting. If any type of compulsion is more obnoxious to all that is held dear in a democratic society we do not know what it is. Compare *Barnette* v. *West Virginia*, 319 U. S. 624.

III. THE RESTRAINING ORDER COULD BE DISREGARDED WITH IMPUNITY

It is the view of the Government and the court below that even if the Norris-LaGuardia Act applies, the court below had inherent jurisdiction to preserve the *status quo* pending its determination of the jurisdictional question.

Wholly apart from the consideration peculiar to the subject matter of the statute which defeat such a contention (see *infra*), the language of the statute precludes this contention. Section 4 of the Norris-LaGuardia Act plainly says, "*No* court of the United States shall have jurisdiction to issue *any* restraining order" to prohibit the doing of those very acts which the court below prohibited. Congress did not say that a court might issue those prohibitions in order to maintain the *status quo* pending a determination of the jurisdictional question. The statutory withdrawal of power is plain and unequivocal.

The reason for the outright prohibition is not hard to find. The *status quo* in labor relations is too perishable to be pre-

served even for ten days. A labor dispute is a highly dynamic phenomenon and even a short delay can irreparably alter the relationship of the parties and the capacity of a union to effectively avail itself of the economic weapons at its disposal. The destructive effect of even a temporary restraint upon the rights of workers and the manner in which the law's delays were deliberately exploited by employers was familiar to the framers of the Norris-LaGuardia Act and to other students of the problem.

> "A large majority of injunction proceedings are never carried beyond a restraining order or temporary injunction and, therefore, are unlikely ever to reach the state of official reporting which is concerned largely with final decrees and with decisions of appellate courts." [8]
>
> "Moreover, the suspension of strike activities, even temporarily, may defeat the strike for all practical purposes and foredoom its resumption, even if the injunction is later lifted." [9]
>
> "Injunctions are often applied for and issued for the moral effect that such injunctions will have in disheartening and discouraging employees engaged in a strike, rather than because of any real necessity to protect property." [10]
>
> "The lawyer who finds that an erroneously granted injunction against picketing has been reversed by the appellate court will probably feel that justice has been attained. The unionist only sees that the strike was effectively broken by the erroneous injunction; the reversal comes months too late to reinstate the contest." [11]
>
> "In labor cases, however, complicating factors enter. The injunction cannot preserve the so-called *status quo;* the situation does not remain in equilibrium awaiting judgment upon full knowledge. The suspension of activities affects only the strikers; the employer resumes his efforts to defeat the strike and resumes them free from the interdicted interferences. Moreover, the suspension of strike activities, even temporarily may defeat the strike for practical purposes, and foredoom its resumption, even if the injunction is later lifted." [12]

[8] See S. Rept. 1060, 71st Cong. 2d Sess., part 2, p. 7.
[9] *Ibid*, p. 201.
[10] *Ibid*, p. 20.
[11] See Chafee, THE INQUIRING MIND (N. Y., 1928), p. 188.
[12] See Frankfurter and Greene, THE LABOR INJUNCTION, p. 201.

"In the complaints, it is customary to ask for a temporary restraining order prohibiting the defendants from doing any of the acts complained of until the case can be heard. The issuance of such orders is entirely discretionary with the court but in non-labor cases is very much a matter of course, their professed purpose being to preserve the *status quo* until the merits of the dispute can be determined.

"While there has been little objection to the issuance of temporary restraining orders in non-labor cases, no feature of the use of injunctions in labor disputes has aroused more adverse criticism. The fundamental reason for this is that labor disputes are dynamic occurrences, and there is no possibility of merely preserving the *status quo*. Strikes are usually won or lost within a few days, so that, for practical purposes, the temporary restraining order is the most important of all injunctive writs in labor cases. This was clearly, although moderately, stated by the late President and Chief Justice Taft:

> 'The temporary restraining order is served upon all strikers; they are not lawyers; their fears are aroused by the process with which they are not acquainted, and, although their purpose may have been entirely lawful, their common determination to carry through the strike is weakened by an order which they have never had an opportunity to question, and which is calculated to discourage proceeding in their original purpose.' "[*]

The theory of the court below that it retained jurisdiction despite the prohibitions of the Norris-LaGuardia Act is typical of the formulations which made an empty promise of the Clayton Act. If validated here, it can easily result in a judicial nullification of the Norris-LaGuardia Act.

CONCLUSION

In commenting on the fate of the Clayton Act in the courts, two students of the problem of the labor injunction say, "The result justifies an application of a familiar bit of French

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[*] Witte, THE GOVERNMENT IN LABOR DISPUTES (N. Y., 1932), pp. 89-90.

cynicism; the more things are legislatively changed, the more they remain the same judicially."

Since those words were written, things have again been changed legislatively by the Norris-LaGuardia Act. We are confident that this Court will not agree with the court below that they remain the same judicially.

Respectfully submitted,

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" Frankfurter and Greene, THE LABOR INJUNCTION (N. Y. 1930), p. 176.

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IN THE

Supreme Court of the United States

October Term, 1946

Nos. 759 and 760

THE UNITED STATES OF AMERICA,

Petitioner,

against

UNITED MINE WORKERS OF AMERICA, an Unincorporated Association, and JOHN L. LEWIS, individually and as President of the United Mine Workers of America,

Respondents.

PETITION FOR PERMISSION TO FILE BRIEF *AMICUS CURIAE* AND BRIEF IN SUPPORT THEREOF

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Of Counsel:
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EDWARD J. MALAMENT.

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16 U. S. C. A. sec. 831 et seq. 6

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46 U. S. C. A. sec. 1 et seq. 6, 10

49 U. S. C. A. sec. 151 6

IN THE

Supreme Court of the United States

October Term, 1946

Nos. 759 and 760

THE UNITED STATES OF AMERICA,

Petitioner,

against

UNITED MINE WORKERS OF AMERICA, an Unincorporated Association, and JOHN L. LEWIS, individually and as President of the United Mine Workers of America,

Respondents.

PETITION FOR PERMISSION TO FILE BRIEF *AMICUS CURIAE*

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The undersigned, as general counsel for the National Maritime Union of America, respectfully petitions this Honorable Court for leave to file the accompanying brief amicus curiae with the consent of the attorneys for the petitioner and respondents.

The National Maritime Union of America alleges that it is an unincorporated membership organization, organized and existing under and by virtue of the laws of the State of New York, for the purpose of improving the conditions of workers employed in the American Merchant Marine.

It has a membership of more than 90,000 seamen. Having written collective bargaining agreements with more than 125 private companies, it maintains branches in all of the principal ports along the Atlantic, Gulf and Pacific coasts including a branch in Puerto Rico and Hawaii.

The issue tendered in the instant case—the exemption of Government from the operation of the Norris-La Guardia Anti-Injunction Act—is of profound concern to all organized labor. The narrow issue may appear to be one of legislative intent in the case of a particular statute. Actually, it cuts far deeper. Increased government intervention in industry, whether as owner, manager or creditor, must be anticipated. The process has already begun. It will be necessarily accelerated in order to meet the competition of government-controlled industry abroad. The basic question is therefore, not one of legislative construction, but the impact of government supervision of industry upon labor's right to organize and bargain collectively. This is probably the first of many such cases that will come before this Court. It warrants, therefore, the most thorough analysis of the interdependence and participation by the state in industry.

The Petitioner desires to bring to the Court's attention the possible implications of an affirmance insofar as it would affect the merchant seamen of America. It desires, also, to illustrate in the case of the merchant marine, a pattern of government participation in business which would permit permanent interference by the Government with collective bargaining in this and other industries.

The federal government has exercised a predominant proprietary interest in the American merchant marine since its inception. As the accompanying brief will show, this interest will undoubtedly continue in the future. To date, marine unions have enjoyed the same rights as shoreside unions. Notwithstanding, the great majority of vessels were government owned or operated for the account of the government; labor management relations in the ma-

rine industry have been governed by the same laws without destruction to private or government ownership. Under these laws the American merchant marine has witnessed tremendous improvement in self-organization, wages and working conditions of merchant seamen. In a single decade, the acceptance of collective bargaining between labor and management has become firmly established.

These gains are now threatened by the decision below. If affirmed the door is opened to the immediate disruption of whatever progress has been made toward industrial stability in this or any other industry where the government may be persuaded to step in and take over. Unless reversed, industry will be encouraged to invoke government aid in order to escape responsibility. The coal miner, the merchant seaman, the factory worker will not understand or accept lightly the forfeiture of hard-won gains, should he, for reasons beyond his control, find himself in a government controlled industry.

WHEREFORE, your petitioner respectfully petitions this Honorable Court for leave to file the accompanying brief amicus curiae.

WILLIAM L. STANDARD,
Attorney for Petitioner,
Office and Post Office Address,
291 Broadway,
New York City.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:
SOUTHERN DISTRICT OF NEW YORK,

WILLIAM L. STANDARD, being duly sworn, deposes and says that he is attorney for the petitioner herein and is familiar with all of the facts set forth in the petition herein. That the facts therein stated are true and correct to deponent's knowledge and information.

WILLIAM L. STANDARD.

Sworn to before me this
13th day of January, 1947.

RUTH H. SASLOW,
Attorney and Counselor at Law,
Residing in Kings County.
Kings Co. Clks. No. 56, Reg. No. A599-S-7.
N. Y. Co. Clks. No. 73, Reg. No. A831-S-7.
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Term Expires March 30, 1947.

IN THE

Supreme Court of the United States

October Term, 1946

Nos. 759 and 760

THE UNITED STATES OF AMERICA,

Petitioner,

against

UNITED MINE WORKERS OF AMERICA, an Unincorporated Association, and JOHN L. LEWIS, individually and as President of the United Mine Workers of America,

Respondents.

BRIEF FOR NATIONAL MARITIME UNION OF AMERICA, CIO, *AMICUS CURIAE*

The Issue

The District Court, in an opinion which makes no reference to the war powers of the Government and which does not suggest that it was written to defend the exercise of such powers, has declared that the United States is not bound by the public policy expressed in the Norris-LaGuardia Act. The Court has permitted the United States to inject itself in a labor dispute and to obtain an order restraining employees from refusing to work.

It is doubtful that even the exigencies of war could condone such a radical upheaval of private rights and relation-

ships.[1] But the decision goes far beyond a construction of the war powers of the Government. It is broad enough to allow similar action to be taken in any labor dispute, whether in time of peace or in war, whenever the United States can show some kind of interest, whether as owner, manager or even creditor.

The real issue, therefore, is whether private industry may, through the medium of a governmental agency, do what it has no right to do directly—invoke the equity powers of the federal courts to break strikes.

The Scope of the Problem

The role of the Government in business is increasing. The National Maritime Union voices no opinion about the desirability of this development. It is a fact which compels attention now and which is apparently the necessary consequence of economic forces. The activities of the Tennessee Valley Authority,[2] the Inland Waterways Corporation[3] and the Reconstruction Finance Corporation[4] illustrate this tendency. The United States Maritime Commission,[5] as were its predecessor agencies, is the most important proprietary interest in the shipping industry.[6]

The National Maritime Union, representing as it does the Nation's largest group of organized seamen, feels deep concern over the effect of the District Court's decision upon the collective bargaining rights of merchant seamen.

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[1] *Ex Parte Milligan*, 71 U. S. 2.

[2] Tit. 16 U. S. C. A. sec. 831 et seq.

[3] Tit. 49 U. S. C. A. sec. 151.

[4] Tit. 15 U. S. C. A. sec. 601 et seq.

[5] 46 U. S. C. A. sec. 1.

[6] *The Postwar Outlook for American Shipping*, p. 35. Report submitted to the United States Maritime Commission by the Postwar Planning Committee, June 15, 1946.

The economic forces at work in the shipping industry have for generations driven it in the direction of greater and greater governmental control. Thus far the rights of maritime labor have not been impaired, but the principles enunciated by the District Judge places in serious question their continued preservation.

The Court below approached its decision in very simple terms:

> "The Court thinks that undoubtedly under the general rules which the Court has spoken of, the Norris-LaGuardia Act did not and does not apply; and following that opinion on the part of the Court, the Court had the same rights that the Court would have had prior to the passage of the Norris-LaGuardia Act and the Clayton Act."

To declare that the sovereign was not affected by statutes which would have denied relief to a private litigant did not, of course, take the problem before the Court. By what right did the sovereign acquire status as plaintiff in a court of equity? To this, the opinion suggests the answer:

> "In this case, what society, what the sovereign power, was endeavoring to do was to hold a matter involving the public interest, a matter involving a potential public calamity by an entity which had been given power by the sovereignty itself, the labor union, from taking the contemplated action, which, as I said before, would amount to a public calamity, until there would be a judicial determination of whether it had the right to take such action."

This was not, of course, the theory of the complaint or even of the Court's findings. There the right to relief was predicated upon interference with Government possession pursuant to Executive Order. The opinion goes far beyond the fact of possession. It implies that whenever a strike leads to serious economic disturbance, the United States may enter the dispute on the side of the employer and aid him by obtaining an order restraining the strike.

But even the narrow basis, alleged in the complaint, places in jeopardy the basic rights of employees. Inferentially, it must mean that whenever the United States is associated with the operation of an otherwise private enterprise, employees lose their right to strike, since the Government may seek and obtain an injunction to prevent the strikers from interfering with the Government's interest.

The path is thus charted for employers who are financed by government funds or who are doing business under the supervision of, or on behalf of, the Government and who wish to avoid dealing with organized labor. If they can induce the Government to act in order to protect its interest, strikes can be forbidden, picketing enjoined, workers deprived of the effective means to bargain collectively.[7]

Government and the Maritime Industry

1. The Extent of Government Control.

The impact of the theory enunciated by the Court below, upon labor relations, is almost incalculable. Maritime employees, particularly, are confronted by an imminent threat to their freedom of action, for the industry has long been one in which the United States, directly or through various instrumentalities, has played a dominant role.

Economic factors brought our merchant marine almost to the point of dissolution by the beginning of the century. Only slightly more than 8 percent of our foreign trade was transported in ships flying the flag of the United States in 1910.[8] The adequacy of our merchant marine had degenerated to the point where we were paying mail subsidies to foreign vessels.[9]

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[7] *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209.

[8] Paul Maxwell Zeis, *American Shipping Policy*, 15.

[9] Winthrop L. Marvin, *The American Merchant Marine*, 423.

For many years Congress searched unsuccessfully for some formula which would permit the establishment of a prosperous merchant marine under private ownership. Yet, as early as 1907, it was suggested that no such solution was possible, and that there was no real alternative to government ownership.[10]

The first World War brought an end to debate for the time being. The shipping industry in private hands was unable to perform the services needed by the Government. Reluctantly, but nevertheless inevitably, the idea of government ownership and control became accepted as the only means available to insure a merchant marine capable of meeting the exigencies of war. The United States Shipping Board was established. It was empowered to construct vessels and to operate them if citizens could not be found capable and willing to do so.[11]

Despite the express intention to return the merchant fleet to private ownership after the war, Government participation did not abate after the end of hostilities. Various means were used to attract private capital. To some extent, ships were operated through government corporations such as the Emergency Fleet Corporation;[12] in the main, however, private operators were engaged under managing agent agreements to operate for the account of the United States.[13]

Even the number of vessels directly owned by the United States did not determine the extent of financial interest in the merchant fleet. As Senator Black reported in 1935, following a Senate investigation into ocean mail contracts:[14]

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[10] Zeis, op. cit., 51.

[11] Ibid., 86-94. The Shipping Board was created by the Act of September 7, 1916, c. 451, sec. 3.

[12] *Sloan Shipyards Corp. v. United States Shipping Board*, 258 U. S. 549, 565, 566.

[13] Zeis, op. cit., 112, 113.

[14] *Investigation of Air Mail and Ocean Mail Contracts*, Report No. 898, 74th Cong. 1st Sess. p. 3.

> "Even the merchant marine we have cannot fairly be described as privately owned. When all mail contractors (except for the Industrial United Fruit Co.) are considered, it is found that the Government has 'invested' *by loans and ship-sale mortgages* on contractors' vessels 1.39 times the stockholders' interest in their companies. This investment by the Government excludes more than $120,000,000 so-called 'mail pay' and a similar expenditure under the Managing Operator Agreements, which *Government money* is responsible for the major portion of the operators' present capital." (Italics in original.)

The conclusion drawn by the Senate Committee from the financial structure of the industry at that time is found in the recommendation "that whenever the taxpayers' money is invested in ships or shipping enterprises, the Government retain full and complete ownership and control." [15]

The adoption of the Merchant Marine Act of 1936 [16] did not result in any appreciable modification of the financial structure of the shipping industry. Congress declared its intention that ships be privately operated "insofar as may be practicable" [17] but that objective was not realized to any real extent. The Maritime Commission, after an exhaustive survey of the maritime scene, admitted: [18]

> "We like to think of shipping as an example of individual initiative, sustained by investments and capable of being operated at a profit. In practice, however, the industry requires substantial Government support to survive. That entails some measures of Government control, which in turn means inflexibility, curtailment of investment and perhaps in the end an increased need for subsidies."

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[15] Ibid., p. 40.

[16] Tit. 46 U. S. C. A. sec. 1101 et seq. Act June 29, 1936, c. 858.

[17] Tit. 46 U. S. C. A. sec. 1101.

[18] *Economic Survey of the American Merchant Marine*, p. 1.

The experience of the Commission up to the outbreak of the Second World War amply confirmed that conclusion. Without subsidies, the fleet could not survive, and even with subsidies, it was found necessary for the Government to operate a good number of vessels through managing agents.[19]

The Second World War brought with it complete government control of shipping. The United States took possession of almost all vessels already in operation either by purchase or bareboat charter. Thousands of new vessels were built. During the war, operation of the fleet was conducted, in the main, by private citizens acting as General Agents for the United States and for the account of the United States.[20]

With the end of the war and with the adoption of the Ship Sales Act of 1946,[21] a program looking toward a privately operated merchant marine was again conceived. But the Maritime Commission is not too sanguine about the prospects of fulfilling this program.[22]

> "Government-owned vessels should be disposed of to private interests insofar as private interests are willing and able to absorb them. It is quite likely, however, that a sizeable number of vessels will remain in Government hands. If the Reserve fleet is taken into consideration, the number of vessels to which the Government retains title may well amount to two or three times those owned by private companies."

In fact, it envisages the possibility that private operation of the shipping industry may have to be abandoned.[23]

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[19] For examples of the manner in which these operations were conducted see: *Brady* v. *Roosevelt S.S. Co.*, 317 U. S. 575; *Quinn* v. *Southgate-Nelson Corp.*, 121 Fed. (2) 190 (CCA 2), cert. den. 314 U. S. 682.

[20] *Hust* v. *Moore-McCormack Lines, Inc.*, 90 Law. Ed. 1220.

[21] Act March 8, 1946, ch. 82.

[22] *Postwar Outlook for American Shipping*, supra, p. 35.

[23] Ibid., 36.

"The trend toward national fleets abroad may make it necessary for the United States to modify its policy. Some of the fleets with which we shall have to compete are Government-owned and operated. Others are quasi-public enterprises. Only a few are entirely private in character. If foreign countries run their merchant marines as national undertakings, it is obvious that we may be forced to do likewise in order to survive."

At the end of November, 1946, the United States owned 3,438 merchant ships. Total sales, both to citizens and to non-citizens stood at 717; 653 applications were on file pending decision. The number of ships sold to citizens was only 253; the others were sold to foreign governments and to foreign citizens. Of the pending applications, only 143 were from American citizens.[24] It is obvious that the transfer of ships to private operations is not proceeding at a rate to justify the expectation that the end of government operation is visible or even contemplated. Even the coastwise trade, normally the healthiest section of the industry, is essentially a governmental enterprise today, with most of the vessels operated by the Maritime Commission through its agents.[25]

2. The Rights of Maritime Labor.

Despite the dependence of the industry upon government participation, maritime employees have always, both in time of war and peace, exercised their rights to organize, to bargain collectively and to strike if need be. Those rights have not been challenged, whether the maritime unions were representing seamen on private or government vessels. During the pre-war operations by the Maritime Commission, the National Labor Relations Board repeatedly rejected the contention that employees on vessels operated under a managing agent's agreement for

[24] United States Maritime Commission Release, Dec. 20, 1946.

[25] United States Maritime Commission Release, November 30, 1946.

the Commission were employees of the United States and, in consequence, without remedy under the Wagner Act. *International Freighting Corp.*, 3 N. L. R. B. 692; *Southgate-Nelson Corporation*, 3 N. L. R. B. 535; *Cosmopolitan Shipping Co., Inc.*, 2 N. L. R. B. 759.

During wartime operations, when for obvious reasons it was important to maintain a stabilized labor policy, the War Shipping Administration, charged with control over merchant ship operation, invited the National Labor Relations Board to apply the provisions of the Wagner Act to general agency ships. The Board accepted the suggestion.[26] Throughout the war and since the maritime unions have dealt with the General Agents in all collective bargaining. Neither the War Shipping Administration nor the Maritime Commission has interfered, although the United States has by far the largest financial interest in the fleet.[27]

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[26] The agreement was made by an exchange of letters between Admiral Land, Administrator of the War Shipping Administration (dated October 20, 1942), and Chairman H. A. Mills of the National Labor Relations Board (dated October 26, 1942).

[27] cf. Clarification Act of 1943, Act of March 24, 1943, c. 26. Senate Report No. 62, February 22, 1943 (Senate Committee on Commerce), expressed gratification that the Administration had been able to utilize private agencies so successfully under war conditions, and commented that the agency agreements provided that crews were to be made available "through the usual channels and in accordance with the customary practices of commercial operators * * *."

This court too recently refused to hold that seamen had lost the rights they enjoyed as employees of the private corporations acting as general agents, merely because the Government possesses financial and managerial control. The Court declared that such basic rights were not subject to radical alteration without clear and convincing evidence of congressional intent to bring this about. *Hust* v. *Moore-McCormack*, supra. It is a reasonable assumption that many of the doubts expressed by the War Shipping Administration concerning the jurisdiction of the National Labor Relations Board over the employees of general agents have been removed by the *Hust* case.

The Effect of an Affirmance of the Decision Below

If the opinion of the District Court is permitted to stand, it prepares the way for an upheaval in labor relations. The Government, through its instrumentalities, would assume the power of a censor in all labor disputes. Ready to its hand would be the broad sanctions available to a court of equity to which resort could be had in almost every instance.

The District Court did not rest its determination upon government ownership. It did not find that the miners were employees of the United States. The record, indeed, would not have justified any such support for the decision. The direct interest of the United States as a plaintiff is tenuous—a naked, constructive possession in which all the proprietary interests of the mine owners are preserved. Yet this was deemed sufficient to enable the Government to disrupt the endeavor by the mine employees to obtain an improvement in their conditions of employment.

If the Government's tangential interest in the mines was sufficient to give it status before a court, then its real interest in other industries invites similar action there. The Reconstruction Finance Corporation has billions invested. The Maritime Commission is the real owner of the merchant marine. It is difficult to think of a major industrial enterprise in which the United States does not have an important financial investment. As mortgagee in some instances, as owner in others, a court of equity would obviously protect its rights.[28]

A private ship operator could not obtain from the District Courts an injunction in a labor dispute. The Maritime Commission, however, could protect its investment, especially in so vital an industry as shipping. The right

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[28] *Reagan* v. *Farmers Loan & Trust Co.*, 154 U. S. 362; *Consolidated Water Co.* v. *City of San Diego*, 84 Fed. 369; *Benson* v. *City of San Diego*, 100 Fed. 158.

to strike and the right to picket would be enjoyed only by sufferance. It is difficult to come to another conclusion in light of the decision of the District Court.

The Decision Below Is in Conflict with the Public Policy of the United States

The public policy of the United States in labor disputes is expressed in Section 2 of the Norris-LaGuardia Act.[29] It is there recognized that the use of the injunction in labor disputes is destructive of basic human rights; it speaks of the need to protect the right to "exercise actual liberty of contract and to protect the freedom of labor".

In the face of this clear expression, the District Court was in error in applying the doctrine of sovereign exemption. There are well defined exceptions to the rule.[30]

> "As where the statute is passed for the general advancement of learning, morality and justice, or to prevent fraud, injury and wrong, or where an Act of Parliament gives a new estate or right to the King, as in that case it will bind him as to the manner of enjoying or using the estate or right as well as the subject." *United States* v. *Herron*, 87 U. S. 251, 255, 256 (1874).

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[29] Tit. 29 U. S. C. A. sec. 102. See also *Lauf* v. *Shinner*, 303 U. S. 323; *Levering & Garrigues Co.* v. *Morrin*, 71 Fed. (2nd) 284, cert. den. 293, 595.

[30] That rule is moreover only applicable in cases where resort to a remedy which would otherwise be available is restricted. The typical instances are statutes of limitations, discharges in bankruptcy, and the like. *Nardone* v. *U. S.*, 302 U. S. 379, 383; *U. S.* v. *Herron*, 87 U. S. 251. It has never been applied to create a right which otherwise would not exist. The Norris-LaGuardia Act does more than restrict private litigants; by it Congress, acting within its Constitutional powers, has taken from the Court the power to grant the relief. The kind of statute to which the sovereign exemption principle has been applied imposes disabilities upon litigants; this statute has imposed a limitation upon the court. Even assuming that a remedy was within the reach of the United States in a situation as is described in the findings, the District Court of the United States was without power to grant it. *Lauf* v. *Shinner*, supra.

It would be somewhat difficult to think of a statute more concerned with "morality and justice" than the Norris-LaGuardia Act. It put an end to abuses which were stultifying the efforts of employees to achieve equality of bargaining power with their employers. It gave content to freedom of contract for workers. To suggest that the United States is not to be controlled by its own public policy so vigorously described is to make a mockery of the legislative function.

CONCLUSION

The decision below should be reversed.

WILLIAM L. STANDARD,
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JAN 11 1947
CHARLES ELMORE CROPLEY

Supreme Court of the United States

OCTOBER TERM, 1946

Nos. 759 and 760

UNITED STATES OF AMERICA

vs.

UNITED MINE WORKERS OF AMERICA

and

JOHN L. LEWIS, individually and as President, United Mine Workers of America

Nos. 781, 782 and 811

UNITED MINE WORKERS OF AMERICA

and

JOHN L. LEWIS, individually and as President, United Mine Workers of America

vs.

UNITED STATES OF AMERICA

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* AND BRIEF OF THE WORKERS DEFENSE LEAGUE, *AMICUS CURIAE*

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MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

To the Honorable the Supreme Court of the United States:

The undersigned, as counsel for the Workers Defense League, respectfully moves this Honorable Court for leave to file the accompanying brief as *Amicus Curiae*. The consent of the attorneys for the parties to the filing of this brief has been obtained.

Special reasons in support of this motion are set out in the accompanying brief.

George Moscowitz,
Attorney for the Workers Defense League, Amicus Curiae.

Supreme Court of the United States

OCTOBER TERM, 1946

Nos. 759 and 760

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Nos. 781, 782 and 811

UNITED MINE WORKERS OF AMERICA

and

JOHN L. LEWIS, individually and as President, United Mine Workers of America,

vs.

UNITED STATES OF AMERICA.

BRIEF OF THE WORKERS DEFENSE LEAGUE, *AMICUS CURIAE*

Statement and Motion

The Workers Defense League is a nation-wide organization devoted to the protection of the democratic rights of

working people of the United States. All the work of the League is done on a completely non-partisan basis, and its efforts are devoted to helping those whose democratic rights are being abrogated, regardless of race, creed or color. On this basis and because of the great national importance of the issues herein, the League respectfully requests leave of this Honorable Court to appear as *amicus curiae* and be of whatever aid it may to this Court. Consent of the attorneys for the parties has been obtained for the submission of this brief and are on file with the clerk of this Court.

Introduction

In this brief we shall attempt to deal with issues which we believe have not been presented as completely as possible to the Court below.

Such issues, as

(a) Whether a labor dispute is involved within the meaning of the Norris-LaGuardia Act,

(b) Whether the Federal Government was acting in sovereign or proprietary capacity,

(c) The relationship of the Krug-Lewis agreement to the prior agreement between the Mine Operators and the United Mine Workers,

(d) The validity of the argument that the restraining order should have been obeyed pending the determination of the issues,

have been and, we feel, will be, adequately presented to the Court.

It is our contention that the statements of the Court below relating to sovereignty and analogies and conclusions drawn therefrom are unsound and violate fundamental tenets of our society and of the Constitution of the United States.

POINT I

The Morris LaGuardia Act deprived the Court below of jurisdiction to issue ex parte the restraining order granted.

A. The Government of the United States is not a government of unlimited powers.

In denying the rule to discharge and vacate the order to show cause in the contempt proceedings, the Court below held that the restraining order was proper because the Federal Government was not bound by the provisions of the Norris-LaGuardia Act (29 U. S. C. A., s. 101 et seq.). In support of this proposition, the Court based upon *Black, Interpretation of Laws,* pp. 94-5, and *Dollar Savings Bank* v. *United States,* 19 Wall. 227 (1873), drew analogies from British constitutional history of the sovereign as *parens patriae.* The conclusion from this analogy was that the Federal Government, the *parens patriae,* was above the statutory law unless specifically named therein.

It is our belief that this analogy, in so far as applicable to the case at bar, is untenable. The constitutional history of England and the United States developed in entirely different conditions and atmospheres.

The history of the English sovereign is one of unlimited power gradually delimited. Until the power of the sovereign is curtailed, its authority in any field is supreme. The Magna Carta is a great historic document for the very reason that it curtailed and set limitations upon the power of the sovereign. English history is replete with such examples. Revolutions were fought and kings' heads rolled in the struggle to delimit and define the sovereign power. The sovereign was above the law unless bound thereby in specific terms.

The American Constitution developed out of just such a struggle to delimit the powers of the English king. With

the history of unbridled sovereignty fresh in its mind, the Constitutional Convention drafted the American Constitution. The Federal Government is granted certain powers only. Whether the Constitution is subject to strict or broad and liberal construction, the Government is, nevertheless, one of limited power. The Tenth Amendment is specific on this point.

The analogy drawn between the American and English sovereign power is, therefore, inaccurate.

B. The Government of the United States, being one of limited powers, is bound by any law applicable to any proceedings and the subject matter thereof whether specifically named or not.

To arrive at any other conclusion, would render meaningless the Tenth Amendment to the Constitution. Except for the specific prohibitions against the exercise of the sovereign power contained in the Constitution, the Government would have unlimited dictatorial power over the people in the absence of specific Acts of Congress to the contrary. All that vast field of human aspiration and endeavor which the Congress has not undertaken to control by legislation, the Government could control by administrative act. The mere statement of such a proposition makes patent its inherent abhorence to the American philosophy of government.

Dollar Savings Bank v. *United States*, 19 Wall. 227 (1873), cited by the Court below as being decisive of the contrary contention, is not in point. It involved a statute which, unlike the Norris-LaGuardia Act, defined the rights of the parties litigant rather than the jurisdiction of the Court as has been presented in the principal brief filed by the petitioners-defendant in the instant case. Furthermore, in that case, the Court itself recognized, at page 240, that its remarks concerning the extent of the sovereign power were *obiter dicta* and "superfluous" to its decision.

C. The inferior Federal courts are statutory and thus subject to the limitations upon its jurisdiction determined by the Congress.

The inferior Federal courts are created by the Congress, pursuant to Article III, s. 1, of the Constitution. They are not self generative but the creatures of statute (28 U. S. C. A., s. 1 et seq.). They came into being because Congress willed it. They have jurisdiction over those matters which Congress has granted to it and no other. As was stated in *Kendall* v. *United States ex rel. Stokes*, 12 Pet. 524, 622 (1838):

> "'The judicial power shall be vested in one Supreme Court, and in such inferior courts as Congress shall, from time to time, ordain or establish.' * * * And as relates to judicial power, the term jurisdiction is not used, until the distribution of those powers among the several courts, is pointed out and defined."

This Court stated in *Cary* v. *Curtis*, 3 How. 236 (1845), at page 245, that:

> "* * * the judicial power of the United States * * * is * * * dependent for its distribution and organization, and for the modes of its exercise, entirely upon the action of Congress, who possess the sole power of creating the tribunals (inferior to the Supreme Court) for the exercise of the judicial power, and of investing them with jurisdiction either limited, concurrent or exclusive, and of withholding jurisdiction from them in the exact degrees and character which to Congress may seem proper for the public good. * * * It follows, then, that the Courts created by statute must look to the statute as the warrant for their authority * * *."

From this it follows that Congress, that branch of the Federal Government to which is delegated the right to bestow power on the courts, can use that same power to define, modify or limit that power. And this, this Court

has held. In *Kline* v. *Burke Construction Co.*, 260 U. S. 226 (1922), the Court stated at page 234:

> "Only the jurisdiction of the Supreme Court is derived directly from the Constitution. Every other court created by the general government derives its jurisdiction wholly from authority of Congress. That body may give, withhold or restrict such jurisdiction at its discretion, provided it be not extended beyond the boundaries fixed by the Constitution. * * * And the jurisdiction having been conferred may, at the will of Congress, be taken away in whole or in part * * *."

From one of the earliest cases before this Court—*Turner* v. *Bank of North America*, 4 Dall. 8, 9-10 (1799)—to the present, it has been consistently recognized that the jurisdiction of the inferior courts was subject to the discretion of Congress.

D. Congress, by the Norris-LaGuardia Act, validly delimited the jurisdiction of the Court to issue restraining orders, irrespective of the parties litigant.

The Act unequivocally states, "No court of the United States * * * shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute * * *." It is pointed out and emphasized that this did not deny any substantive right but merely affected and modified a particular remedy—namely, the power of the court in an *ex parte* proceeding to grant an injunction in a labor dispute.

An analogous modification has been upheld by this Court in *Michaelson* v. *United States*, 266 U. S. 42, 65 et seq. (1924), involving the right of a defendant in a contempt proceeding to ask for a jury trial. It was urged that this materially interfered with the inherent power of the court but this Court upheld the right of the Congress to regulate the power granted to the courts. See also *Ex Parte Robinson*, 19 Wall. 505.

Referring to the Norris-LaGuardia Act's limitation on the injunctive power of the court, the Second Circuit Court stated:

> "However, Congress has the power, as now exercised, of withdrawing this jurisdiction from the District Court. Congress may give either whole or restricted jurisdiction at its discretion, provided there is no extension beyond the boundaries fixed by the Constitution. * * * and Congress has the power to regulate the power which it grants * * *." *Levering, etc.*, v. *Morrin*, 2nd C., 71 Fed 2d, 284 (1934), certiorari denied, 293 U. S. 595.

Thus, no Federal District Court has jurisdiction to hear the case at bar and the fact that the United States is a party does not confer such jurisdiction upon it. Otherwise, the Federal District Court, without the benefit of enabling legislation, would be obtaining jurisdiction and power over matters from which Congress has specifically withdrawn whatever jurisdiction it might have had.

The issue that evolves is not whether or not the Federal Government is bound by legislation wherein it is not specifically mentioned but whether or not the Court has the power to issue the restraining order it did. To hold that the United States may seek and obtain the restraining order although the Court is without jurisdiction is to convert the District Court into a Star Chamber. The presence of the United States in the proceedings does not increase the capacity of the Court. The Court could no more issue the order herein than it could do any other act for which legislation had not been enacted granting such power. By granting the restraining order, the Court assumed jurisdiction where it had no jurisdiction.

POINT II

The order adjudging the petitioners in contempt was improperly granted and should be ordered vacated. The Court below erred in denying the motion of petitioners to discharge and vacate the rule to show cause against petitioners and should be reversed.

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CHARLES ELMORE CROPLEY

Nos. 759, 760

In the Supreme Court of the United States

OCTOBER TERM, 1946

THE UNITED STATES OF AMERICA, PETITIONER

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, RESPONDENTS

MOTION TO SUSPEND RULE AND TO ADVANCE ARGUMENT IN THE EVENT PETITION FOR WRITS OF CERTIORARI ARE GRANTED

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MOTION TO SUSPEND RULE AND TO ADVANCE ARGUMENT IN THE EVENT PETITION FOR WRITS OF CERTIORARI ARE GRANTED

Petitioner respectfully moves this Court that the provisions of Rule 38, Subdivision 3, of this Court be suspended in these cases and that this Court require a prompt response to the petition filed herein.

Petitioner further respectfully moves this Court to advance these cases for argument as provided by Rule 20, Subdivision 6, of this Court in the event the petition for writs of certiorari herein are granted.

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Petitioner's motion is based upon the public interest involved in these cases, the facts concerning which are set forth in the petition for writs of certiorari.

TOM C. CLARK,
Attorney General.

U. S. GOVERNMENT PRINTING OFFICE: 1949

Rutledge J. op. 2, 26
Frankfurter J. op. 8, 20

SUPREME COURT OF THE UNITED STATES

Nos. 759, 760, 781, 782 AND 811.—OCTOBER TERM, 1946.

The United States of America, Petitioner,
759 v.
United Mine Workers of America, an Unincorporated Association.

The United States of America, Petitioner,
760 v.
John L. Lewis, Individually and as President of the United Mine Workers of America.

United Mine Workers of America, an Unincorporated Association, Petitioner,
781 v.
The United States of America.

John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner,
782 v.
The United States of America.

United Mine Workers of America, an Unincorporated Association, and John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioners,
811 v.
The United States of America.

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.

[March 6, 1947.]

MR. CHIEF JUSTICE VINSON delivered the opinion of the Court.

In October, 1946, the United States was in possession of, and operating, the major portion of the country's bituminous coal mines.[1] Terms and conditions of employment were controlled "for the period of Government possession" by an agreement[2] entered into on May 29, 1946, between Secretary of Interior Krug, as Coal Mines Administrator, and John L. Lewis, as President of the United Mine Workers of America.[3] The Krug-Lewis agreement embodied

[1] The United States had taken possession of the mines pursuant to Executive Order 9728 of May 21, 1946, 11 F. R. 5593, in which the President, after determining that labor disturbances were interrupting the production of bituminous coal necessary for the operation of the national economy during the transition from war to peace, directed the Secretary of Interior to take possession of and operate the mines and to negotiate with representatives of the miners concerning the terms and conditions of employment.

The President's action was taken under the Constitution, as President of the United States and Commander in Chief of the Army and Navy, and by virtue of the authority conferred upon him by the War Labor Disputes Act, 57 Stat. 163, 50 U. S. C. App. §§ 1501–1511. Section 3 of the Act authorizes the seizure of facilities necessary for the war effort if and when the President finds and proclaims that strikes or other labor disturbances are interrupting the operation of such facilities.

Section 3 directs that the authority under that section to take possession of the specified facilities will terminate with the ending of hostilities and that the authority under that section to operate facilities seized will terminate six months after the ending of hostilities. The President on December 31, 1946, proclaimed that hostilities were terminated on that day. 12 F. R. 1.

[2] The initial paragraph of the contract provided:

"This agreement between the Secretary of the Interior, acting as Coal Mines Administrator under the authority of Executive Order No. 9728 (dated May 21, 1946, 11 F. R. 5593), and the United Mine Workers of America, covers for the period of Government possession the terms and conditions of employment in respect to all mines in Government possession which were as of March 31, 1946, subject to the National Bituminous Coal Wage Agreement, dated April 11, 1945."

[3] In compliance with Executive Order No. 9728 and § 5 of the War Labor Disputes Act, the agreement had been submitted to and approved by the National Wage Stabilization Board.

far reaching changes favorable to the miners;[4] and, except as amended and supplemented therein, the agreement carried forward the terms and conditions of the National Bituminous Coal Wage Agreement of April 11, 1945.[5]

On October 21, 1946, the defendant Lewis directed a letter to Secretary Krug and presented issues which led directly to the present controversy. According to the defendant Lewis, the Krug-Lewis agreement carried forward § 15 of the National Bituminous Coal Wage Agreement of April 11, 1945. Under that section either party to the contract was privileged to give ten days' notice in writing of a desire for a negotiating conference which the other party was required to attend; fifteen days after the beginning of the conference either party might give notice in writing of the termination of the agreement, effective five days after receipt of such notice. Asserting authority under this clause, the defendant Lewis in his letter of October 21 requested that a conference begin November 1 for the purpose of negotiating new arrangements concerning wages, hours, practices, and other pertinent matters appertaining to the bituminous coal industry.[6]

Captain N. H. Collisson, then Coal Mines Administrator, answered for Secretary Krug. Any contractual basis for requiring negotiations for revision of the Krug-Lewis

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[4] See p. 25 *infra*.

[5] The saving clause was in the following form:

"Except as amended and supplemented herein, this agreement carries forward and preserves the terms and conditions contained in all joint wage agreements effective April 1, 1941, through March 31, 1943, the supplemental agreement providing for the six (6) day workweek, and all the various district agreements executed between the United Mine Workers and the various Coal Associations and Coal Companies (based upon the aforesaid basic agreement) as they existed on March 31, 1943, and the National Bituminous Coal Wage Agreement, dated April 11, 1945."

[6] The letter also charged certain breaches of contract by the Government and asserted significant changes in Government wage policy.

agreement was denied.[7] In the opinion of the Government, § 15 of the 1945 agreement had not been preserved by the Krug-Lewis agreement; indeed, § 15 had been expressly nullified by the clause of the latter contract providing that the terms contained therein were to cover the period of Government possession. Although suggesting that any negotiations looking toward a new agreement be carried on with the mine owners, the Government expressed willingness to discuss matters affecting the operation of the mines under the terms of the Krug-Lewis agreement.

Conferences were scheduled and began in Washington on November 1, both the union and the Government adhering to their opposing views regarding the right of either party to terminate the contract.[8] At the fifth meeting, held on November 11, the union for the first time offered specific proposals for changes in wages and other conditions of employment. On November 13 Secretary Krug requested the union to negotiate with the mine owners. This suggestion was rejected.[9] On November 15 the union, by John L. Lewis, notified Secretary Krug that "Fifteen days having now elapsed since the beginning of said conference, the United Mine Workers of America, exercising its option hereby terminates said Krug-Lewis Agreement as of 12:00 o'clock P. M., Midnight, Wednesday, November 20, 1946."

Secretary Krug again notified the defendant Lewis that he had no power under the Krug-Lewis agreement or under the law to terminate the contract by unilateral declara-

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[7] Captain Collisson also specifically denied breaches of contract on the part of the Government.

[8] Conferences were carried on without prejudice to the claims of either party in this respect.

[9] Secretary Krug and defendant Lewis met privately on November 13 and again on November 14.

tion.[10] The President of the United States announced his strong support of the Government's position and requested reconsideration by the union in order to avoid a national crisis. However, the defendant Lewis, as union president, circulated to the mine workers copies of the November 15 letter to Secretary Krug. This communication was for the "official information" of union members.

The United States on November 18 filed a complaint in the District Court for the District of Columbia against the United Mine Workers of America and John L. Lewis, individually and as president of the union. The suit was brought under the Declaratory Judgment Act[11] and sought judgment to the effect that the defendants had no power unilaterally to terminate the Krug-Lewis agreement. And, alleging that the November 15 notice was in reality a strike notice, the United States, pending the final determination of the cause, requested a temporary restraining order and preliminary injunctive relief.

The court, immediately and without notice to the defendants, issued a temporary order[12] restraining the

[10] Secretary Krug had been advised by the Attorney General, whose opinion had been sought, that § 15 of the 1945 agreement was no longer in force.

[11] Judicial Code, § 274d, 28 U. S. C. § 400.

[12] The pertinent part of the order was as follows:

"Now, Therefore, IT IS BY THE COURT this 18th day of November, 1946,

"ORDERED, that the defendants and each of them and their agents, servants, employees, and attorneys, and all persons in active concert or participation with them, be and they are hereby restrained pending further order of this Court from permitting to continue in effect the notice heretofore given by the defendant, John L. Lewis, to the Secretary of Interior dated November 15, 1946; and from issuing or otherwise giving publicity to any notice that or to the effect that the Krug-Lewis Agreement has been, is, or will at some future date be terminated, or that said agreement is or shall at some future date be nugatory or void at any time during Government possession of the bituminous coal mines; and from breaching any of their obligations

defendants from continuing in effect the notice of November 15, from encouraging the mine workers to interfere with the operation of the mines by strike or cessation of work, and from taking any action which would interfere with the court's jurisdiction and its determination of the case. The order by its terms was to expire at 3:00 p. m. on November 27 unless extended for good cause shown. A hearing on the preliminary injunction was set for 10:00 a. m. on the same date. The order and complaint were served on the defendants on November 18.

A gradual walkout by the miners commenced on November 18, and, by midnight of November 20, consistent with the miners' "no contract, no work" policy, a full-blown strike was in progress. Mines furnishing the major part of the nation's bituminous coal production were idle.

On November 21 the United States filed a petition for a rule to show cause why the defendants should not be punished as and for contempt, alleging a willful violation of the restraining order. The rule issued, setting Novem-

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under said Krug-Lewis Agreement; and from coercing, instigating, inducing, or encouraging the mine workers at the bituminous coal mines in the Government's possession, or any of them, or any person, to interfere by strike, slow down, walkout, cessation of work, or otherwise, with the operation of said mines by continuing in effect the aforesaid notice or by issuing any notice of termination of agreement or through any other means or device; and from interfering with or obstructing the exercise by the Secretary of the Interior of his functions under Executive Order 9728; and from taking any action which would interfere with this Court's jurisdiction or which would impair, obstruct, or render fruitless, the determination of this case by the Court;

"AND IT IS FURTHER ORDERED that this restraining order shall expire at 3 o'clock p. m. on November 27th, 1946, unless before such time the order for good cause shown is extended, or unless the defendants consent that it may be extended for a longer period;

"AND IT IS FURTHER ORDERED that plaintiff's motion for preliminary injunction be set down for hearing on November 27th, 1946, at 10:00 o'clock a. m."

ber 25 as the return day and, if at that time the contempt was not sufficiently purged, setting November 27 as the day for trial on the contempt charge.

On the return day, defendants, by counsel, informed the court that no action had been taken concerning the November 15 notice, and denied the jurisdiction of the court to issue the restraining order and rule to show cause. Trial on the contempt charge was thereupon ordered to begin as scheduled on November 27. On November 26 the defendants filed a motion to discharge and vacate the rule to show cause. Their motion challenged the jurisdiction of the court, and raised the grave question of whether the Norris-LaGuardia Act [13] prohibited the granting of the temporary restraining order at the instance of the United States.[14]

[13] 47 Stat. 70, 29 U. S. C. § 101.

[14] The grounds offered for the motion were:

"1. The Temporary Restraining Order is void in that this case involves and grows out of a labor dispute. Under the provisions of the Norris-LaGuardia Act (47 Stat. 70), and the provisions of Section 20 of the Clayton Act (38 U. S. Stat. C. 323, 730), this Honorable Court is without jurisdiction over the subject-matter of this cause.

"2. Equity acts only where there is no plain, adequate, and complete remedy at law. The allegations of the Petition for the Rule purport to show a violation of the War Labor Disputes Act—a serious offense—in which field there is no place for equity intervention.

"3. Observance of all the strict rules of criminal procedure is required to establish criminal contempt. It is apparent that the alleged facts set out in the unverified Petition and in the affidavit of Captain Collisson, filed in support of the Rule, are based wholly upon hearsay, information and belief and are not sufficient to sustain the Rule to Show Cause.

"4. The object of the Petition for the Rule is necessarily punitive and not compensatory. Accordingly, it being for criminal contempt, the Petition should have been presented as an independent proceeding and not as supplemental to the original cause.

"5. The Temporary Restraining Order is beyond the jurisdiction of this Honorable Court and therefore void because it contravenes the First, Fifth, and Thirteenth Amendments to the Constitution of the United States."

After extending the temporary restraining order on November 27, and after full argument on November 27 and November 29, the court, on the latter date, overruled the motion and held that its power to issue the restraining order in this case was not affected by either the Norris-LaGuardia Act or the Clayton Act.[18]

The defendants thereupon pleaded not guilty and waived an advisory jury. Trial on the contempt charge proceeded. The Government presented eight witnesses, the defendants none. At the conclusion of the trial on December 3, the court found that the defendants had permitted the November 15 notice to remain outstanding, had encouraged the miners to interfere by a strike with the operation of the mines and with the performance of governmental functions, and had interfered with the jurisdiction of the court. Both defendants were found guilty beyond reasonable doubt of both criminal and civil contempt dating from November 18. The court entered judgment on December 4, fining the defendant Lewis $10,000, and the defendant union $3,500,000. On the same day a preliminary injunction, effective until a final determination of the case, was issued in terms similar to those of the restraining order.

On December 5 the defendants filed notices of appeal from the judgments of contempt. The judgments were stayed pending the appeals. The United States on December 6 filed a petition for certiorari in both cases. Section 240 (a) of the Judicial Code authorizes a petition for certiorari by any party and the granting of certiorari prior to judgment in the Circuit Court of Appeals. Prompt settlement of this case being in the public interest, we granted certiorari on December 9, and subsequently, for similar reasons, granted petitions for certiorari filed by the defendants, — U. S. —. The cases were consolidated for argument.

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[18] 38 Stat. 730, 738, § 20, 29 U. S. C. § 52.

I.

Defendants' first and principal contention is that the restraining order and preliminary injunction were issued in violation of the Clayton and Norris-LaGuardia Acts. We have come to a contrary decision.

It is true that Congress decreed in § 20 of the Clayton Act that "no such restraining order or injunction shall prohibit any person or persons . . . from recommending, advising, or persuading others . . ." to strike. But by the Act itself this provision was made applicable only to cases "between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment. . . ."[16] For reasons which will be explained at greater length in discussing the applicability of the Norris-LaGuardia Act, we cannot construe the general term "employer" to include the United States, where there is no express reference to the United States and no evident affirmative grounds for believing that Congress intended to withhold an otherwise available remedy from the Government as well as from a specified class of private persons.

Moreover, it seems never to have been suggested that the proscription on injunctions found in the Clayton Act is in any respect broader than that in the Norris-LaGuardia Act. Defendants do not suggest in their argument that it is. This Court, on the contrary, has stated that the Norris-LaGuardia Act "still further . . . [narrowed] the circumstances under which the federal courts could grant injunctions in labor disputes."[17] Consequently, we would feel justified in this case to consider the application of the Norris-LaGuardia Act alone. If it does

[16] *American Foundries* v. *Tri-City Council*, 257 U. S. 184, 202 (1921); *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443, 470 (1921).

[17] *United States* v. *Hutcheson*, 312 U. S. 219, 231 (1941).

not apply, neither does the less comprehensive proscription of the Clayton Act; [18] if it does, defendant's reliance on the Clayton Act is unnecessary.

By the Norris-LaGuardia Act, Congress divested the federal courts of jurisdiction to issue injunctions in a specified class of cases. It would probably be conceded that the characteristics of the present case would be such as to bring it within that class if the basic dispute had remained one between defendants and a private employer, and the latter had been the plaintiff below. So much seems to be found in the express terms of §§ 4 and 13 of the Act, set out in the margin.[19] The specifications in

[18] See also *Allen Bradley Co.* v. *Union*, 325 U. S. 797, 805 (1945); *United States* v. *Hutcheson*, 312 U. S. 219, 235, 236 (1941).

[19] "SEC. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

"(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

"(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act;

"(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

"(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

"(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

"(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

"(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

"(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

§ 13 are in general terms and make no express exception for the United States. From these premises, defendants argue that the restraining order and injunction were forbidden by the Act and were wrongfully issued.

Even if our examination of the Act stopped here, we could hardly assent to this conclusion. There is an old and well-known rule that statutes which in general terms

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"(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act."

"SEC. 13. When used in this Act, and for the purposes of this Act—

"(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined).

"(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

"(d) The term 'court of the United States' means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia."

divest pre-existing rights or privileges will not be applied to the sovereign without express words to that effect.[20] It has been stated, in cases in which there were extraneous and affirmative reasons for believing that the sovereign should also be deemed subject to a restrictive statute, that this rule was a rule of construction only.[21] Though that may be true, the rule has been invoked successfully in cases so closely similar to the present one,[22] and the statement of the rule in those cases has been so explicit,[23] that we are inclined to give it much weight here. Congress was not ignorant of the rule which those cases reiterated; and, with knowledge of that rule, Congress would not, in writing the Norris-LaGuardia Act, omit to use "clear and specific [language] to that effect" if it actually intended to reach the Government in all cases.

But we need not place entire reliance in this exclusionary rule. Section 2,[24] which declared the public policy of the

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[20] *Lewis, Trustee* v. *United States*, 92 U. S. 618, 622 (1875); *United States* v. *Herron*, 20 Wall. 251, 263 (1873); see *Guarantee Co.* v. *Title Guaranty Co.*, 224 U. S. 152, 155 (1912).

[21] *United States* v. *California*, 297 U. S. 175, 186 (1936); *Green* v. *United States*, 9 Wall. 655, 658 (1869).

[22] *United States* v. *Stevenson*, 215 U. S. 190, 197 (1909); *United States* v. *American Bell Telephone Co.*, 159 U. S. 548, 553–555 (1895); *Dollar Savings Bank* v. *United States*, 19 Wall. 227, 238, 239 (1873).

[23] "The most general words that can be devised (for example, any person or persons, bodies politic or corporate) affect not him [the sovereign] in the least, if they may tend to restrain or diminish any of his rights or interests." *Dollar Savings Bank* v. *United States*, 19 Wall. 227, 239 (1873). "If such prohibition is intended to reach the Government in the use of known rights and remedies, the language must be clear and specific to that effect." *United States* v. *Stevenson*, 215 U. S. 190, 197 (1909).

In both these cases the question, as in the present case, was whether the United States was divested of a certain remedy by a statute or a rule of law which, without express reference to the United States, made that remedy generally unavailable.

[24] "SEC. 2. In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such

United States as a guide to the Act's interpretation, carries indications as to the scope of the Act. It predicates the purpose of the Act on the contrast between the position of the "individual unorganized worker" and that of the "owners of property" who have been permitted to "organize in the corporate and other forms of ownership association", and on the consequent helplessness of the worker "to exercise actual liberty of contract . . . and thereby to obtain acceptable terms and conditions of employment." The purpose of the Act is said to be to contribute to the worker's "full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives . . . for the purpose of collective bargaining. . . ." These considerations, on their face, obviously do not apply to the Government as an employer or to relations between the Government and its employees.

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jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:

"Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted."

If we examine §§ 4 and 13, on which defendants rely, we note that they do not purport to strip completely from the federal courts all their pre-existing powers to issue injunctions, that they withdraw this power only in a specified type of case, and that this type is a case "involving or growing out of any labor dispute." Section 13, in the first instance, declares a case to be of this type when it "involves persons" or "involves any conflicting or competing interests" in a labor dispute of "persons" who stand in any one of several defined economic relationships. And "persons" must be involved on both sides of the case, or the conflicting interests of "persons" on both sides of the dispute. The Act does not define "persons". In common usage that term does not include the sovereign, and statutes employing it will ordinarily not be construed to do so.[25] Congress made express provision, R. S. § 1, 1 U. S. C. § 1, for the term to extend to partnerships and corporations, and in § 13 of the Act itself for it to extend to associations. The absence of any comparable provision extending the term to sovereign governments implies that Congress did not desire the term to extend to them.

Those clauses in § 13 (a) and (b) spelling out the position of "persons" relative to the employer-employee relationship affirmatively suggest that the United States, as an employer, was not meant to be included. Those clauses require that the case involve persons "who are engaged in the same industry, trade, craft or occupation", who "have direct or indirect interests therein", who are "employees of the same employer", who are "members of the same or an affiliated organization of employers or employees", or who stand in some one of other specified positions relative to a dispute over the employer-employee relationship. Every one of these qualifications in § 13 (a) and (b) we think relates to an economic role ordinarily filled by a private individual or corporation, and not by a

[25] *United States* v. *Cooper Corp.*, 312 U. S. 600, 604, 1941; *United States* v. *Fox*, 94 U. S. 315, 321 (1876).

sovereign government. None of them is at all suggestive of any part played by the United States in its relations with its own employees. We think that Congress' failure to refer to the United States or to specify any role which it might commonly be thought to fill is strong indication that it did not intend that the Act should apply to situations in which United States appears as employer.

In the type of case to which the Act applies, § 7 requires certain findings of fact as conditions precedent to the issuance of injunctions even for the limited purposes recognized by the Act. One such required finding is that "the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection." Obviously, such finding could never be made if the complainant were the United States, and federal property were threatened by federal employees, as the responsibility of protection would then rest not only on state officers, but also on all federal civil and military forces. If these failed, a federal injunction would be a meaningless form. This provision, like those in §§ 2, 4 and 13, already discussed, indicates that the Act was not intended to affect the relations between the United States and its employees.

Defendants maintain that certain facts in the legislative history of the Act so clearly indicate an intent to restrict the Government's use of injunctions that all the foregoing arguments to the contrary must be rejected.

Representative Beck of Pennsylvania indicated in the course of the House debates that he thought the Government would be included within the prohibitions of the Act.[20] Mr. Beck was not a member of the Judiciary Committee which reported the bill, and did not vote for its passage. We do not accept his views as ex-

[20] 75 Cong. Rec. 5473. An amendment by Representative Beck, designed to save to the United States the right to intervene by injunction in private labor disputes, was defeated. 75 Cong. Rec. 5503, 5505.

pressive of the attitude of Congress relative to the status of the United States under the Act.

Representative Blanton of Texas introduced an amendment to the bill which would have made an exception to the provision limiting the injunctive power "where the United States Government is the petitioner", and this amendment was defeated by the House.[27] But the first comment made on this amendment, after its introduction, was that of Representative LaGuardia, the House sponsor of the bill, who opposed it, not on the ground that such an exception should not be made, but rather on the ground that the express exception was unnecessary. Mr. LaGuardia read the definition of a person "participating or interested in a labor dispute" in § 13 (b), referred to the provisions of § 13 (a), and then added: "I do not see how in any possible way the United States can be brought in under the provisions of this bill." When Mr. Blanton thereupon suggested the necessity of allowing the Government to use injunctions to maintain discipline in the army and navy, Mr. LaGuardia pointed out that these services are not "a trade, craft or occupation". Mr. Blanton's only answer to Mr. LaGuardia's opposition was that the latter "does not know what extensions will be made." A vote was then taken and the amendment defeated.[28] Obviously this incident does not reveal a Congressional intent to legislate concerning the relationship between the United States and its employees.

In the debates in both Houses of Congress numerous references were made to previous instances in which the United States had resorted to the injunctive process in labor disputes between private employers and private employees,[29] where some public interest was thought to have

[27] 75 Cong. Rec. 5503.

[28] *Ibid.*

[29] Most frequently mentioned was the Government action in connection with the railway strikes of 1894 and 1922.

become involved. These instances were offered as illustrations of the abuses flowing from the use of injunctions in labor disputes and the desirability of placing a limitation thereon. The frequency of these references and the attention directed to their subject matter are compelling circumstances. We agree that they indicate that Congress, in passing the Act, did not intend to permit the United States to continue to intervene by injunction in purely private labor disputes.

But whether Congress so intended or not is a question different from the one before us now. Here we are concerned only with the Government's right to injunctive relief in a dispute with its own employees. Although we recognize that Congress intended to withdraw such remedy in the former situation, it does not follow that it intended to do so in the latter. The circumstances in which the Government sought such remedy in 1894 and 1922 were vastly different from those in which the Government is seeking to carry out its responsibilities by taking legal action against its own employees, and we think that the references in question have only the most distant and uncertain bearing on our present problem. Indeed, when we look further into the history of the Act, we find other events which unequivocally demonstrate that injunctive relief was not intended to be withdrawn in the latter situation.

When the House had before it a rule for the consideration of the bill, Representative Michener, a ranking minority member of the Judiciary Committee and spokesman for the minority party on the Rules Committee, made a general statement in the House concerning the subject matter of the bill and advocating its immediate consideration. In this survey he clearly stated that the Government's rights with respect to its own employees would not be affected: [30]

[30] 75 Cong. Rec. 5464.

> "Be it remembered that this bill does not attempt to legislate concerning Government employees. I do not believe that the enactment of this bill into law will take away from the Federal Government any rights which it has under existing law, to seek and obtain injunctive relief where the same is necessary for the functioning of the Government."

In a later stage of the debate, Representative Michener repeated this view in the following terms: [31]

> "This deals with labor disputes between individuals, not where the Government is involved. It is my notion that under this bill the Government can function with an injunction, if that is necessary in order to carry out the purpose of the Government. I should like to see this clarified; but I want to go on record as saying that under my interpretation of this bill the Federal Government will not at any time be prevented from applying for an injunction, if one is necessary in order that the Government may function."

Representatives Michener and LaGuardia were members of the Judiciary Committee which reported and recommended the bill to the House. They were the most active spokesmen for the Committee, both in explaining the bill and advocating its passage. No member of the House who voted for the bill challenged their explanations. At least one other member expressed a like understanding.[32] We cannot but believe that the House accepted these authoritative representations as to the proper

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[31] 75 Cong. Rec. 5509.

[32] Representative Schneider, at 75 Cong. Rec. 5514, stated: "And it has also been pointed out that the enactment of this bill will not take away from the Federal Government any rights which it has under existing law to seek and obtain injunctive relief where the same is deemed by Government officials to be necessary for the functioning of the Government.

"In other words, a tremendous field in which the injunction can still be used effectively will remain after the enactment of this bill."

construction of the bill.[33] The Senate expressed no contrary understanding,[34] and we must conclude that Congress, in passing the Act, did not intend to withdraw the Government's existing rights to injunctive relief against its own employees.

If we were to stop here, there would be little difficulty in accepting the decision of the District Court upon the scope of the Act. And the cases in this Court express consistent views concerning the types of situations to which the Act applies.[35] They have gone no farther than to follow Congressional desires by regarding as beyond the jurisdiction of the District Courts the issuance of injunctions sought by the United States and directed to persons who are not employees of the United States. None of these cases dealt with the narrow segment of the employer-employee relationship now before us.

But regardless of the determinative guidance so offered, defendants rely upon the opinions of several Senators uttered in May, 1943, while debating the Senate version of the War Labor Disputes Act.[36] The debate at that time

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[33] *United States* v. *Wrightwood Dairy Co.*, 315 U. S. 110, 125 (1942); *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 444, 475 (1921).

[34] We have been cited to no instances in which the consideration of the Senate was directed to the specific issue of the relationship between the United States and its own employees. The use of the injunction by the Government was in question, but primarily in respect to those instances in which the United States had taken action in private labor disputes, *e. g.*, 75 Cong. Rec. 4509, 4619, 4620, 4693, 5001, 5005. Silence upon the status of the Government as employer is not inconsistent with the desires of the House to exclude from the Act those disputes in which the United States is seeking relief against its own employees.

[35] *United States* v. *American Federation of Musicians*, 318 U. S. 741 (1943); see *United States* v. *Hutcheson*, 312 U. S. 219, 227 (1941). In accord is *United States* v. *Weirton Steel Co.*, 7 F. Supp. 255 (1934); cf. *Anderson* v. *Bigelow*, 130 F. (2d) 460 (1942).

[36] It was upon § 3 of this Act that the President based in part the seizure of the bituminous coal mines. See note 1, *supra*.

centered around a substitute for the bill, S. 796, as originally introduced.[37] Section 5 of the substitute, as amended, provided, "The district courts of the United States and the United States Courts of the Territories or possessions shall have jurisdiction, for cause shown, but solely upon application by the Attorney General or under his direction . . . to restrain violations or threatened violations of this act."[38] Following the rejection of other amendments aimed at permitting a much wider use of injunctions and characterized as contrary to the Norris-LaGuardia Act,[39] several Senators were of the opinion that § 5 itself would remove some of the protection given employees by that Act,[40] a view contrary to what we have just determined to be the scope of the Act as passed in 1932. Section 5 was defeated and no injunctive provisions were contained in the Senate bill.

We have considered these opinions, but cannot accept them as authoritative guides to the construction of the Norris-LaGuardia Act. They were expressed by Senators, some of whom were not members of the Senate in 1932, and none of whom was on the Senate Judiciary Committee which reported the bill. They were expressed eleven years after the Act was passed and cannot be accorded even the same weight as if made by the same individuals in the course of the Norris-LaGuardia de-

[37] 89 Cong. Rec. 3812. The substitute bill embodied two amendments proposed by Senator Connally on the floor of the Senate. 89 Cong. Rec. 3809.

[38] Section 5 of the substitute bill originally did not limit the issuance of injunctions to those sought by the Attorney General, but Senator Wagner's proposal to insert "but solely upon application by the Attorney General or under his direction" was accepted. 89 Cong. Rec. 3986.

[39] A great number of the references to the Norris-LaGuardia Act were made in connection with the proposed Taft and Reed amendments. 89 Cong. Rec. 3897, 3984, 3985, 3986.

[40] Senators Connally and Danahar expressed this view and other Senators were apparently in accord. 89 Cong. Rec. 3988–9.

bates.[41] Moreover, these opinions were given by individuals striving to write legislation from the floor of the Senate and working without the benefit of hearings and committee reports on the issues crucial to us here.[42] We fail to see how the remarks of these Senators in 1943 can serve to change the legislative intent of Congress expressed in 1932, and we accordingly adhere to our conclusion that the Norris-LaGuardia Act did not affect the jurisdiction of the Courts to issue injunctions when sought by the United States in a labor dispute with its own employees.

It has been suggested, however, that Congress, in passing the War Labor Disputes Act, effectively restricted the theretofore existing authority of the Courts to issue injunctions in connection with labor disputes in plants seized by the United States. Chief reliance is placed upon the rejection by the Senate of § 5 of the Connally substitute bill.[43] But it is clear that no com-

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[41] See *United States* v. *Wrightwood Dairy Co.*, 315 U. S. 110, 125 (1942); *McCaughn* v. *Hershey Chocolate Co.*, 283 U. S. 488, 493 (1931); *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 444, 474 (1921).

[42] 89 Cong. Rec. 3889, 3890, 3904–5.

[43] Section 5, as we have noted before, would have permitted issuing injunctions to restrain violations of the Act. It is not at all clear that the rejection of a proposal in this form should, in any event, be of determinative significance in the case at bar. Here the United States resorted to the District Court for vindication of its right under a formal contract, said to be operative "for the period of Government possession" and mutually adopted by the parties concerned as a satisfactory solution to a grave situation. The District Court, to preserve existing conditions, issued a restraining order and a preliminary injunction, effective until contractual rights could be ascertained. True, the action of the defendant Lewis in calling a strike, in addition to terminating the contract, suggests a violation of § 6 of the War Labor Disputes Act. But Senate disapproval of using injunctions to avert the latter event does not necessarily imply a desire to diminish the contractual rights and remedies of the United States.

parable action transpired in the House. Indeed, proposals in the House and the House substitute [44] for S. 796 authorized the use of injunctions in connection with private plants not yet seized by the United States. These admitted inroads on the Norris-LaGuardia Act drew much comment [45] on the floor of the House, but nevertheless prevailed. Seizure was also contemplated, and criminal sanctions were made available in this situation, without specifically authorizing the use of injunctions by the United States. The latter issue was not raised, not debated and not commented upon in the House. But the fact that the House version did not provide for the issuance of injunctions to aid in the operation of seized plants is not the issue here. Rather, it is whether the House expressed any intent to restrict the existing authority of the courts. We find not the slightest suggestion to that effect in either the House substitute bill or the debates concerning it.

Nor can the action of the conference committee be construed as a Congressional proscription of issuing injunctions to aid the United States in dealing with employees in seized plants. Neither the House nor Senate version, as these bills went to conference, in any way placed this issue before the conferees. The conference committee simply struck the broader provisions of the House bill allowing injunctions to issue in private labor disputes and had no occasion to consider the narrower question we have before us now. The conferees, in producing the Act in its final form, did nothing which suggests that the Congress intended to bar injunctions sought by the Government to aid in the operation of seized plants. We thus find nothing in the legislative background of the War Labor Disputes Act which constitutes an authorita-

[44] 89 Cong. Rec. 5382.

[45] See, for example, 89 Cong. Rec. 5241, 5243, 5299, 5305, 5321, 5325.

tive expression of Congress directing the courts to withhold from the United States injunctive relief in connection with an Act designed to strengthen the hand of the Government in serious labor disputes.

The defendants contend, however, that workers in mines seized by the Government are not employees of the federal Government; that in operating the mines thus seized, the Government is not engaged in a sovereign function; and that, consequently, the situation in this case does not fall within the area which we have indicated as lying outside the scope of the Norris-LaGuardia Act. It is clear, however, that workers in the mines seized by the Government under the authority of the War Labor Disputes Act stand in an entirely different relationship to the federal Government with respect to their employment from that which existed before the seizure was effected. That Congress intended such was to be the case is apparent both from the terms of the statute and from the legislative deliberations preceding its enactment. Section 3 of the War Labor Disputes Act calls for the seizure of any plant, mine, or facility when the President finds that the operation thereof is threatened by strike or other labor disturbance and that an interruption in production will unduly impede the war effort. Congress intended that by virtue of Government seizure, a mine should become, for purposes of production and operation, a Government facility in as complete a sense as if the Government held full title and ownership.[46] Consistent with that view, criminal penalties were provided for interference with the oper-

[46] Thus in the legislative debates Senator Connally stated: "... but it does seem to me that the power and authority and sovereignty of the Government of the United States are so comprehensive that when we are engaged in war and a plant is not producing, we can take it over, and that when we do take it over, it is a Government plant, just as much as if we had a fee simple title to it, ..." 89 Cong. Rec. 3811–3812. See also *id.* at 3809, 3884–3885, 5722.

ation of such facilities.[47] Also included were procedures for adjusting wages and conditions of employment of the workers in such a manner as to avoid interruptions in production.[48] The question with which we are confronted is not whether the workers in mines under Government seizure are "employees" of the federal Government for every purpose which might be conceived,[49] but whether, for the purposes of this case, the incidents of the relationship existing between the Government and the workers are those of governmental employer and employee.

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[47] War Labor Disputes Act, § 6, provided:

"(a) Whenever any plant, mine, or facility is in the possession of the United States, it shall be unlawful for any person (1) to coerce, instigate, induce, conspire with, or encourage any person, to interfere, by lock-out, strike, slow-down, or other interruption, with the operation of such plant, mine, or facility, or (2) to aid any such lock-out, strike, slow-down, or other interruption interfering with the operation of such plant, mine, or facility by giving direction or guidance in the conduct of such interruption, or by providing funds for the conduct or direction thereof or for the payment of strike, unemployment, or other benefits to those participating therein. No individual shall be deemed to have violated the provisions of this section by reason only of his having ceased work or having refused to continue to work or to accept employment.

"(b) Any person who willfully violates any provision of this section shall be subject to a fine of not more than $5,000, or to imprisonment for not more than one year, or both."

[48] *Id.*, § 5.

[49] Thus according to § 23 of the Revised Regulations for the Operation of the Coal Mines Under Government Control, issued by the Coal Mines Administrator on July 8, 1946: ". . . nothing in these regulations shall be construed as recognizing such personnel as officers and employees of the Federal Government within the meaning of the statutes relating to Federal employment." And see § 16. Section 23 also provides, however: "All personnel of the mines, both officers and employees, shall be considered as called upon by Executive Order No. 9728, to serve the Government of the United States. . . ."

Executive Order 9728, in pursuance of which the Government seized possession of the mines, authorized the Secretary of the Interior to negotiate with the representatives of the miners, and thereafter to apply to the National Wage Stabilization Board for appropriate changes in terms and conditions of employment for the period of governmental operation.[30] Such negotiations were undertaken and resulted in the Krug-Lewis agreement. That agreement contains many basic departures from the earlier contract entered into between the mine workers and the private operators on April 11, 1945, which, except as amended and supplemented by the Krug-Lewis agreement, was continued in effect for the period of Government possession. Among the terms of the Krug-Lewis agreement were provisions for a new mine safety code. Operating managers were directed to provide the nine employees with the protection and benefits of Workmen's Compensation and Occupational Disease Laws. Provision was made for a Welfare and Retirement Fund and a Medical and Hospital Fund. The agreement granted substantial wage increases and contained terms relating to vacations and vacation pay. Included were provisions calling for changes in equitable grievance procedures.

It should be observed that the Krug-Lewis agreement was one solely between the Government and the union. The private mine operators were not parties to the contract nor were they made parties to any of its subsequent modifications. It should also be observed that the provisions relate to matters which normally constitute the subject matter of collective bargaining between employer and employee. Many of the provisions incorporated into the

[30] After the negotiation of the Krug-Lewis agreement, the changes agreed upon therein were approved by the National Wage Stabilization Act and thereafter by the President. This procedure is provided for in § 5 of the War Labor Disputes Act.

agreement for the period of Government operation had theretofore been vigorously opposed by the private operators and have not subsequently received their approval.

It is descriptive of the situation to state that the Government, in order to maintain production and to accomplish the purposes of the seizure, has substituted itself for the private employer in dealing with those matters which formerly were the subject of collective bargaining between the union and the operators. The defendants by their conduct have given practical recognition to this fact. The union negotiated a collective agreement with the Government and has made use of the procedures provided by the War Labor Disputes Act to modify its terms and conditions. The union has apparently regarded the Krug-Lewis agreement as a sufficient contract of employment to satisfy the mine workers' traditional demand of a contract as a condition precedent to their work. The defendant Lewis, in responding to a suggestion of the Secretary of the Interior that certain union demands should be taken to the private operators with the view of making possible the termination of Government possession, stated in a letter dated November 15, 1946: "The Government of the United States seized the mines and entered into a contract. The mine workers do not propose to deal with parties who have no status under the contract." The defendant Lewis in the same letter referred to the operators as "strangers to the Krug-Lewis Agreement" and to the miners as the "400,000 men who now serve the Government of the United States in the bituminous coal mines."

The defendants, however, point to the fact that the private managers of the mines have been retained by the Government in the role of operating managers with substantially the same functions and authority. It is true that the regulations for the operation of the mines issued by the Coal Mines Administrator provide for the reten-

tion of the private managers to assist in the realization of the objects of Government seizure and operation.[51] The regulations, however, also provide for the removal of such operating managers at the discretion of the Coal Mines Administrator.[52] Thus the Government, though utilizing the services of the private managers, has nevertheless retained ultimate control.

The defendants also point to the regulations which provide that none of the earnings or liabilities resulting from the operation of the mines, while under seizure, are for the account or at the risk or expense of the Government;[53] that the companies continue to be liable for all Federal, State, and local taxes;[54] and that the mining companies remain subject to suit.[55] The regulations on which defendants rely represent an attempt on the part of the Coal Mines Administrator to define the respective powers and obligations of the Government and private operators during the period of Government control. We do not at this time express any opinion as to the validity of these regulations. It is sufficient to state that, in any event, the matters to which they refer have little persuasive weight in determining the nature of the relation existing between the Covernment and the mine workers.

We do not find convincing the contention of the defendants that in seizing and operating the coal mines the Government was not exercising a sovereign function and that, hence, this is not a situation which can be excluded from the terms of the Norris-LaGuardia Act. In the Executive Order which directed the seizure of the mines, the President found and proclaimed that "the coal produced

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[51] Revised Regulations for the Operation of the Coal Mines under Government Control, § 15.

[52] Regulations, §§ 16, 31.

[53] Regulations, §§ 17, 40.

[54] Regulations, § 24.

[55] *Ibid.*

by such mines is required for the war effort and is indispensable for the continued operation of the national economy during the transition from war to peace; that the war effort will be unduly impeded or delayed by . . . interruptions [in production]; and that the exercise . . . of the powers vested in me is necessary to insure the operation of such mines in the interest of the war effort and to preserve the national economic structure in the present emergency. . . ." Under the conditions found by the President to exist, it would be difficult to conceive of a more vital and urgent function of the Government than the seizure and operation of the bituminous coal mines. We hold that in a case such as this, where the Government has seized actual possession of the mines, or other facilities, and is operating them, and the relationship between the Government and the workers is that of employer and employee, the Norris-LaGuardia Act does not apply.

II.

Although we have held that the Norris-LaGuardia Act did not render injunctive relief beyond the jurisdiction of the District Court, there are alternative grounds which support the power of the District Court to punish violations of its orders as criminal contempt.

Attention must be directed to the situation obtaining on November 18. The Government's complaint sought a declaratory judgment in respect to the right of the defendants to terminate the contract by unilateral action. What amounted to a strike call, effective at midnight on November 20, had been issued by the defendant Lewis as an "official notice". Pending a determination of defendants' right to take this action, the Government requested a temporary restraining order and injunctive relief. The memorandum in support of the restraining order seriously

urged the inapplicability of the Norris-LaGuardia Act to the facts of this case, and the power of the District Court to grant the ancillary relief depended in great part upon the resolution of this jurisdictional question. In these circumstances, the District Court unquestionably had the power to issue a restraining order for the purpose of preserving existing conditions pending a decision upon its own jurisdiction.

The temporary restraining order was served on November 18. This was roughly two and one-half days before the strike was to begin. The defendants filed no motion to vacate the order. Rather, they ignored it, and allowed a nationwide coal strike to become an accomplished fact. This Court has used unequivocal language in condemning such conduct,[56] and has in *United States* v. *Shipp*, 203 U. S. 563 (1906), provided protection for judicial authority in situations of this kind. In that case this Court had allowed an appeal from a denial of a writ of *habeas corpus* by the Circuit Court of Tennessee. The petition had been filed by Johnson, then confined under a sentence of death imposed by a state court. Pending the appeal, this Court issued an order staying all proceedings against Johnson. However, the prisoner was taken from jail and lynched. Shipp, the sheriff having custody of Johnson, was charged with conspiring with others for the purpose of lynching Johnson, with intent to show contempt for the order of this Court. Shipp denied the jurisdiction of this Court to punish for contempt on the ground that the stay order was issued pending an appeal over which

[56] "If a party can make himself a judge of the validity of orders which have been issued, and by his own act of disobedience set them aside, then are the courts impotent, and what the Constitution now fittingly calls the 'judicial power of the United States' would be a mere mockery." *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 450 (1911).

this Court had no jurisdiction because the constitutional questions alleged were frivolous and only a pretense. The Court, through Mr. Justice Holmes, rejected the contention as to want of jurisdiction, and in ordering the contempt to be tried, stated:

> "We regard this argument as unsound. It has been held, it is true, that orders made by a court having no jurisdiction to make them may be disregarded without liability to process for contempt. *In re Sawyer*, 124 U. S. 200; *Ex parte Fisk*, 113 U. S. 713; *Ex parte Rowland*, 104 U. S. 604. But even if the Circuit Court had no jurisdiction to entertain Johnson's petition, and if this court had no jurisdiction of the appeal, this court, and this court alone, could decide that such was the law. It and it alone necessarily had jurisdiction to decide whether the case was properly before it. On that question, at least, it was its duty to permit argument and to take the time required for such consideration as it might need. See *Mansfield, Coldwater & Lake Michigan Ry. Co.* v. *Swan*, 111 U. S. 379, 387. Until its judgment declining jurisdiction should be announced, it had authority from the necessity of the case to make orders to preserve the existing conditions and the subject of the petition, just as the state court was bound to refrain from further proceedings until the same time. Rev. Stat. § 766; act of March 3, 1893, c. 226, 27 Stat. 751. The fact that the petitioner was entitled to argue his case shows what needs no proof, that the law contemplates the possibility of a decision either way, and therefore must provide for it." 203 U. S. 573.

If this Court did not have jurisdiction to hear the appeal in the *Shipp* case, its order would have had to be vacated. But it was ruled that only the Court itself could determine that question of law. Until it was found that the Court had no jurisdiction, "... it had authority from the necessity of the case to make orders to preserve the existing conditions and the subject of the petition ..."

Application of the rule laid down in *United States v. Shipp, supra*, is apparent in *Carter* v. *United States*, 135 F. 2d 858 (1943). There a district court, after making the findings required by the Norris-LaGuardia Act, issued a temporary restraining order. An injunction followed after a hearing in which the court affirmatively decided that it had jurisdiction and overruled the defendants' objections based upon the absence of diversity and the absence of a case arising under a statute of the United States. These objections of the defendants prevailed on appeal, and the injunction was set aside. *Brown* v. *Coumanis*, 135 F. 2d 163 (1943). But in *Carter*, a companion case, violations of the temporary restraining order were held punishable as criminal contempt. Pending a decision on a doubtful question of jurisdiction, the District Court was held to have power to maintain the *status quo* and punish violations as contempt.[57]

In the case before us, the District Court had the power to preserve existing conditions while it was determining its own authority to grant injunctive relief. The defendants, in making their private determination of the law, acted at their peril. Their disobedience is punishable as criminal contempt.

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[57] "It cannot now be broadly asserted that a judgment is always a nullity if jurisdiction of some sort or other is wanting. It is now held that, except in case of plain usurpation, a court has jurisdiction to determine its own jurisdiction, and if it be contested and on due hearing it is upheld, the decision unreversed binds the parties as a thing adjudged. *Treines* v. *Sunshine Mining Co.*, 308 U. S. 66, 60 S. Ct. 44, 84 L. Ed. 85; *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381, 403, 60 S. Ct. 907, 84 L. Ed. 1263; *Stoll* v. *Gottlieb*, 305 U. S. 165, 59 S. Ct. 134, 83 L. Ed. 104. So in the matter of federal jurisdiction, which is often a close question, the federal court may either have to determine the facts, as in contested citizenship, or the law, as whether the case alleged arises under a law of the United States."

Although a different result would follow were the question of jurisdiction frivolous and not substantial, such contention would be idle here. The applicability of the Norris-LaGuardia Act to the United States in a case such as this had not previously received judicial consideration, and both the language of the Act and its legislative history indicated the substantial nature of the problem with which the District Court was faced.

Proceeding further, we find impressive authority for the proposition that an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings.[58] This is true without regard even for the constitutionality of the Act under which the order is issued. In *Howat* v. *Kansas*, 258 U. S. 181, 189–90 (1922) this Court said:

> "An injunction duly issuing out of a court of general jurisdiction with equity powers upon pleadings properly invoking its action, and served upon persons made parties therein and within the jurisdiction, must be obeyed by them however erroneous the action of the court may be, even if the error be in the assumption of the validity of a seeming but void law going to the merits of the case. It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished." [59]

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[58] *Howat* v. *Kansas*, 258 U. S. 181 (1922); *Russell* v. *United States*, 86 F. 2d 389 (1936); *Locke* v. *United States*, 75 F. 2d 157 (1935); *O'Hearne* v. *United States*, 66 F. 2d 933 (1933); *Schwartz* v. *United States*, 217 F. 866 (1914); *Brougham* v. *Oceanic Steam Navigation Co.*, 205 F. 857 (1913); *Blake* v. *Nesbet*, 144 F. 279 (1905); see *Alemite Mfg. Corp.* v. *Staff*, 42 F. 2d 832, 833 (1930).

[59] See *Alemite Mfg. Corp.* v. *Staff*, 42 F. 2d 832, 833 (1930).

Violations of an order are punishable as criminal contempt even though the order is set aside on appeal, *Worden* v. *Searls*, 121 U. S. 14 (1887),[60] or though the basic action has become moot, *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418 (1911).

We insist upon the same duty of obedience where, as here, the subject matter of the suit, as well as the parties, was properly before the court; where the elements of federal jurisdiction were clearly shown; and where the authority of the court of first instance to issue an order ancillary to the main suit depended upon a statute, the scope and applicability of which were subject to substantial doubt. The District Court on November 29 affirmatively decided that the Norris-LaGuardia Act was of no force in this case and that injunctive relief was therefore authorized. Orders outstanding or issued after that date were to be obeyed until they expired or were set aside by appropriate proceedings, appellate or otherwise. Convictions for criminal contempt intervening before that time may stand.

It does not follow, of course, that simply because a defendant may be punished for criminal contempt for disobedience of an order later set aside on appeal, that the plaintiff in the action may profit by way of a fine imposed in a simultaneous proceeding for civil contempt based upon a violation of the same order. The right to remedial relief falls with an injunction which events prove was erroneously issued, *Worden* v. *Searls*, *supra* at 25, 26; *Salvage Process Corp.* v. *Acme Tank Cleaning Process Corp.*, 86 F. 2d 727 (1936); *S. Anargyros* v. *Anargyros & Co.*, 191 F. 208 (1911);[61] and *a fortiori* when the injunc-

[60] See *Salvage Process Corp.* v. *Acme Tank Cleaning Process Corp.*, 86 F. 2d 727 (1936).

[61] See *Leman* v. *Krentler-Arnold Co.*, 284 U. S. 448, 453 (1932); *Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324, 329 (1904); *McCann* v.

tion or restraining order was beyond the jurisdiction of the court. Nor does the reason underlying *United States* v. *Shipp*, *supra*, compel a different result. If the Norris-LaGuardia Act were applicable in this case, the conviction for civil contempt would be reversed in its entirety.

Assuming, then, that the Norris-LaGuardia Act applied to this case and prohibited injunctive relief at the request of the United States, we would set aside the preliminary injunction of December 4 and the judgment for civil contempt; but we would, subject to any infirmities in the contempt proceedings or in the fines imposed, affirm the judgments for criminal contempt as validly punishing violations of an order then outstanding and unreversed.

III.

The defendants have pressed upon us the procedural aspects of their trial and allege error so prejudicial as to require reversal of the judgments for civil and criminal contempt. But we have not been persuaded.

The question is whether the proceedings will support judgments for both criminal and civil contempt; and our attention is directed to Rule 42 (b) of the Rules of Criminal Procedure.[62] The rule requires criminal contempt

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New York Stock Exchange, 80 F. 2d 211, 214 (1935). In accord in the case of settlement is *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 451–2 (1911): ". . . when the main cause was terminated . . . between the parties, the complainant did not require and was not entitled to any compensation or relief of any other character."

[62] 18 U. S. C. A. following § 687. Rule 42 (b) regulates various aspects of a proceeding for criminal contempt where the contempt is not committed in the actual presence of the court:

"Disposition Upon Notice and Hearing. A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge

to be prosecuted on notice stating the essential facts constituting the contempt charged. In this respect, there was compliance with the rule here. Notice was given by a rule to show cause served upon defendants together with the Government's petition and supporting affidavit. The pleadings rested only upon information and belief, but Rule 42 (b) was not designed to cast doubt upon the propriety of instituting criminal contempt proceedings in this manner.[33] The petition itself charged a violation of the outstanding restraining order, and the affidavit alleged in detail a failure to withdraw the notice of November 15, the cessation of work in the mines, and the consequent interference with governmental functions and the jurisdiction of the court. The defendants were fairly and completely apprised of the events and conduct constituting the contempt charged.

However, Rule 42 (b) requires that the notice issuing to the defendants describe the criminal contempt charged as such. The defendants urge a failure to comply with this rule. The petition alleged a willful violation of the restraining order, and both the petition and the rule to show cause inquired as to why the defendants should not be "punished as and for a contempt" of court. But nowhere

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in open court in the presence of the defendant or, on application of the United States attorney or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest. The defendant is entitled to a trial by jury in any case in which an act of Congress so provides. He is entitled to admission to bail as provided in these rules. If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a verdict or finding of guilt the court shall enter an order fixing the punishment."

[33] *Conley* v. *United States*, 59 F. 2d 929 (1932); *Kelly* v. *United States*, 250 F. 947 (1918); see *National Labor Relations Board* v. *Arcade-Sunshine Co.*, 122 F. 2d 964, 965 (1941).

was the contempt described as criminal as required by the rule.

Nevertheless, the defendants were quite aware that a criminal contempt was charged.[64] In their motion to discharge and vacate the rule to show cause, the contempt charged was referred to as criminal.[65] And in argument on the motion the defendants stated and were expressly informed that a criminal contempt was to be tried. Yet it is now urged that the omission of the words "criminal contempt" from the petition and rule to show cause was prejudicial error. Rule 42 (b) requires no such rigorous application, for it was designed to insure a realization by contemnors that a prosecution for criminal contempt is contemplated.[66] Its purpose was sufficiently fulfilled here, for this failure to observe the rule in all respects has not resulted in substantial prejudice to the defendants.

Not only were the defendants fully informed that a criminal contempt was charged, but we think they enjoyed during the trial itself all the enhanced pro-

[64] It could be well argued that the use of the word "punished" in the petition and rule to show cause was in itself adequate notice, for "punishment" has been said to be the magic word indicating a proceeding in criminal, rather than civil, contempt. Moskovitz, *Contempt of Injunctions, Civil and Criminal*, 43 Col. L. Rev. 780, 789–90 (1943). But "punishment" as used in contempt cases is ambiguous. "It is not the fact of punishment, but rather its character and purpose . . ." *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 441 (1911).

Noteworthy also is the allegation in the affidavit that the defendants' violation of the restraining order had "interfered with this Court's jurisdiction." And the charge in the petition of "willfully . . . and deliberately" disobeying the restraining order indicates an intention to prosecute criminal contempt.

[65] See point 4, note 14, *supra*. The points and authorities in support of the motion used similar language.

[66] The rule in this respect follows the suggestion made in *McCann* v. *New York Stock Exchange*, 80 F. 2d 211, 214–215 (1935). Notes to the Rules of Criminal Procedure, Advisory Committee, March, 1945, p. 34.

tections accorded defendants in criminal contempt proceedings.[67] We need not treat these at length, for defendants, in this respect, urge only their right to a jury trial as provided in § 11 of the Norris-LaGuardia Act. But § 11 is not operative here, for it applies only to cases "arising under this Act",[68] and we have already held that the restriction upon injunctions imposed by the Act do not govern this case.[69] The defendants, we think, were properly tried by the court without a jury.

If the defendants were thus accorded all the rights and privileges owing to defendants in criminal contempt cases, they are put in no better position to complain because their trial included a proceeding in civil contempt and was carried on in the main equity suit. Common sense would recognize that conduct can amount to both civil and criminal contempt. The same acts may justify a court in resorting to coercive and to punitive measures.[70] Disposing of both aspects of the contempt in a single proceeding would seem at least a convenient practice. Litigation in patent cases has frequently fol-

[67] *Cooke* v. *United States*, 267 U. S. 517, 537 (1925); *see Michaelson* v. *United States*, 266 U. S. 42, 66–67 (1924).

[68] Section 11 provides in part: "In all cases arising under this Act in which a person shall be charged with contempt in a court of the United States (as herein defined), the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed . . ."

[69] We believe, and the Government admits, that the defendants would have been entitled to a jury trial if § 11 applied to the instant contempt proceeding and if this case arose under the Norris-LaGuardia Act.

[70] "It may not be always easy to classify a particular act as belonging to either one of these two classes. It may partake of the characteristics of both." *Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324, 329 (1904). *See Lamb* v. *Cramer*, 285 U. S. 217, 221 (1932); *Merchants Stock & Grain Co.* v. *Board of Trade of Chicago*, 201 F. 20, 24 (1912).

lowed this course,[71] and the same method can be noted in other situations in both federal and state courts.[72] Rule 42 (b), while demanding fair notice and recognition of the criminal aspects of the case, contains nothing precluding a simultaneous disposition of the remedial aspects of the contempt tried. Even if it be the better practice to try criminal contempt alone and so avoid obscuring the defendant's privileges in any manner, a mingling of civil and criminal contempt proceedings must nevertheless be shown to result in substantial prejudice before a reversal will be required.[73] That the contempt

[71] "In patent cases it has been usual to embrace in one proceeding the public and private remedy—to punish the defendant if found worthy of punishment, and, at the same time, or as an alternative, to assess damages and costs for the benefit of the plaintiff . . ." *Hendryx* v. *Fitzpatrick*, 19 F. 810, 813 (1884). Examples of this procedure appear in *Union Tool Co.* v. *Wilson*, 259 U. S. 107 (1922); *Matter of Christensen Engineering Co.*, 194 U. S. 458 (1904); *Wilson* v. *Byron Jackson Co.*, 93 F. 2d 577 (1937); *Kreplik* v. *Couch Patents Co.*, 190 F. 565 (1911).

[72] *Farmers Nat'l Bank* v. *Wilkinson*, 266 U. S. 503 (1925); *In re Swan, Petitioner*, 150 U. S. 637 (1893); *In re Ayers*, 123 U. S. 443 (1887); *Merchants Stock & Grain Co.* v. *Board of Trade of Chicago*, 201 F. 20 (1912). See *Phillips Sheet & Tin Plate Co.* v. *Amalgamated Ass'n. of Iron & Tin Workers*, 208 F. 335, 340 (1913). Instances in the state courts include *Carey* v. *District Court of Jasper County*, 226 Iowa 717, 285 N. W. 236 (1939); *Holloway* v. *Peoples Water Co.*, 100 Kans. 414, 167 P. 265 (1917); *Grand Lodge, K. P. of New Jersey* v. *Jansen*, 62 N. J. Eq. 737, 48 Atl. 526 (1901).

[73] We are not impressed with defendants' attack on the pleadings as insufficient to support a judgment for civil contempt. The petition, affidavit, and rule to show cause did not expressly mention civil contempt or remedial relief, but the affidavit contained allegations of interference with the operation of the mines and with governmental functions. These claims do not negative remedial or coercive relief. More significantly, the affidavit charged disobedience of the restraining order by failing to withdraw the notice of Nov. 15. We will not assume that the defendants were not instantly aware that a usual remedy in such a situation is to impose coercive sanctions until the

proceeding carried the number and name of the equity suit [74] does not alter this conclusion, especially where, as here, the United States would have been the complaining party in whatever suit the contempt was tried. In so far as the criminal nature of the double proceeding dominates [75] and in so far as the defendants' rights in the criminal trial are not diluted by the mixing of civil with criminal contempt, to that extent is prejudice avoided.[76] Here, as we have indicated, all rights and privileges of the defendants were fully respected, and there has been no showing of substantial prejudice flowing from the formal peculiarities of defendants' trial.

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act is performed. This is a function of civil contempt. *Lamb* v. *Cramer*, 285 U. S. 217, 221 (1932); *Michaelson* v. *United States*, 266 U. S. 42, 66 (1924); *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 449 (1911). Furthermore, defendants' counsel, in argument on the motion to vacate, remarked that the United States was proceeding upon the theory of civil contempt, and attempted only to demonstrate the inability of the United States to seek this relief. And when the Government's suggestions for fines were before the Court, defendants' counsel argued the excessiveness of the fines for either civil or criminal contempt.

[74] Criminal contempt was apparently tried out in the equity suit in the patent cases in note 71 *supra*. And this was the practice followed in *Matter of Christensen Engineering Co.*, 194 U. S. 458 (1904); *Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324 (1904); *New Orleans* v. *Steamship Co.*, 20 Wall. 387 (1874). In none of these cases in this Court, however, has there been an affirmative discussion of the propriety of proceeding in this manner. Compare *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 445 (1911); *United States* v. *Bittner*, 11 F. 2d 93, 95 (1926), with *Nye* v. *United States*, 313 U. S. 33, 42 (1941).

[75] Cf. *Nye* v. *United States*, 313 U. S. 33, 42 (1941); *Union Tool Co.* v. *Wilson*, 259 U. S. 107, 110 (1922); *In re Merchants Stock & Grain Co., Petitioner*, 223 U. S. 639, 642 (1911); *Matter of Christensen Engineering Co.*, 194 U. S. 458, 461 (1904).

[76] In *Federal Trade Commission* v. *A. McLean & Son*, 94 F. 2d 802 (1938), it could not be said that the criminal element had been dominant and clear from the very outset of the case. The same is true of *Norstrom* v. *Wahl*, 41 F. 2d 910 (1930).

Lastly, the defendants have assigned as error and argued in their brief that the District Court improperly extended the restraining order on November 27 for another ten days. There was then in progress argument on defendants' motion to vacate the rule to show cause, a part of the contempt proceedings. In the circumstances of this case, we think there was good cause shown for extending the order.[77]

IV.

Apart from their contentions concerning the formal aspects of the proceedings below, defendants insist upon the inability of the United States to secure relief by way of civil contempt in this case, and would limit the right to proceed by civil contempt to situations in which the United States is enforcing a statute expressly allowing resort to the courts for enforcement of statutory orders. *McCrone* v. *United States*, 307 U. S. 61 (1939), however, rests upon no such narrow ground, for the Court there said that "Article 3, § 2, of the Constitution, expressly contemplates the United States as a party to civil proceedings by extending the jurisdiction of the federal judiciary 'to Controversies to which the United States shall be a party.'" *Id.* at 63. The United States was fully entitled to bring the present suit and to benefit from orders entered in its behalf.[78] We will not reduce the practical

[77] Rule 65 (b) of the Federal Rules of Civil Procedure provides that a temporary restraining order should expire according to its terms "unless within the time so fixed the order, for good cause shown, is extended for a like period . . ." There being sufficient cause for the extension, there is no conflict with the subsequent clause of Rule 65 (b) requiring that "the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character . . ."

[78] Section 24 of the Judicial Code, 28 U. S. C. § 41, extends the jurisdiction of the District Courts to "all suits of a civil nature, at common law or in equity, brought by the United States . . ."

value of the relief granted by limiting the United States, when the orders have been disobeyed, to a proceeding in criminal contempt, and by denying to the Government the civil remedies enjoyed by other litigants, including the opportunity to demonstrate that disobedience has occasioned loss.[79]

V.

It is urged that, in any event, the amount of the fine of $10,000 imposed on the defendant Lewis and of the fine of $3,500,000 imposed on the defendant Union were arbitrary, excessive, and in no way related to the evidence adduced at the hearing.

Sentences for criminal contempt are punitive in their nature and are imposed for the purpose of vindicating the authority of the court. *Gompers* v. *Bucks Stove & Range Co.*, *supra* at 441. The interests of orderly government demand that respect and compliance be given to orders issued by courts possessed of jurisdiction of persons and subject matter. One who defies the public authority and willfully refuses his obedience, does so at his peril. In imposing a fine for criminal contempt, the trial judge may properly take into consideration the extent of the willful and deliberate defiance of the court's order, the seriousness of the consequences of the contumacious behavior, the necessity of effectively terminating the defendant's defiance as required by the public interest, and the importance of deterring such acts in the future. Because of the nature of these standards, great reliance must be placed upon the discretion of the trial judge.

The trial court properly found the defendants guilty of criminal contempt. Such contempt had continued for

[79] The Court in the *McCrone* case affirmed 100 F. 2d 322 and noted, 307 U. S. 61, 63, note 4, the conflict with *Federal Trade Commission* v. *A. McClean & Son*, 94 F. 2d 802, 804 (1938), upon which defendants now rely.

15 days from the issuance of the restraining order until the finding of guilty. Its willfulness had not been qualified by any concurrent attempt on defendants' part to challenge the order by motion to vacate or other appropriate procedures. Immediately following the finding of guilty, defendant Lewis stated openly in court that defendants would adhere to their policy of defiance. This policy, as the evidence showed, was the germ center of an economic paralysis which was rapidly extending itself from the bituminous coal mines into practically every other major industry of the United States. It was an attempt to repudiate and override the instrument of lawful government in the very situation in which governmental action was indispensable.

The trial court also properly found the defendants guilty of civil contempt. Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained. *Gompers* v. *Bucks Stove & Range Co.*, *supra*, at 448, 449. Where compensation is intended, a fine is imposed, payable to the complainant. Such fine must of course be based upon evidence of complainant's actual loss,[80] and his right, as a civil litigant, to the compensatory fine is dependent upon the outcome of the basic controversy.[81]

But where the purpose is to make the defendant comply, the court's discretion is otherwise exercised. It must then consider the character and magnitude of the harm

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[80] *Leman* v. *Krentler-Arnold Co.*, 284 U. S. 448, 455–456 (1932); *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 443–444 (1911); *Parker* v. *United States*, 126 F. 2d 370, 380 (1942); *Judelshon* v. *Black*, 64 F. 2d 116 (1933); *Norstrom* v. *Wahl*, 41 F. 2d 910, 914 (1930).

[81] See pp. 33–34 *supra*.

threatened by continued contumacy, and the probable effectiveness of any suggested sanction in bringing about the result desired.[82]

It is a corollary of the above principles that a court which has returned a conviction for contempt must, in fixing the amount of a fine to be imposed as a punishment or as a means of securing future compliance, consider the amount of defendant's financial resources and the consequent seriousness of the burden to that particular defendant.

In the light of these principles, we think the record clearly warrants a fine of $10,000 against defendant Lewis for criminal contempt. A majority of the Court, however, does not think that it warrants the unconditional imposition of a fine of $3,500,000 against the defendant union. A majority feels that, if the court below had assessed a fine of $700,000 against the defendant union, this, under the circumstances, would not be excessive as punishment for the criminal contempt theretofore committed; and feels that, in order to coerce the defendant union into a future compliance with the court's order, it would have been effective to make the other $2,800,000 of the fine conditional on the defendant's failure to purge itself within a reasonable time. Accordingly, the judgment against the defendant union is held to be excessive. It will be modified so as to require the defendant union to pay a fine of $700,000, and further, to pay an additional fine of $2,800,000 unless the defendant union, within five days after the issuance of the mandate herein, shows that it has fully complied with the temporary restraining order issued November 18, 1946, and the preliminary injunction issued December 4, 1946. The defendant union can effect full compliance

[82] Cf. *Doyle* v. *London Guarantee Co.*, 204 U. S. 599 (1907). See also *In re Chiles*, 22 Wall. 157, 168 (1874).

only by withdrawing unconditionally the notice given by it, signed John L. Lewis, President, on November 15, 1946, to J. A. Krug, Secretary of the Interior, terminating the Krug-Lewis agreement as of twelve o'clock midnight, Wednesday, November 20, 1946, and by notifying, at the same time, its members of such withdrawal in substantially the same manner as the members of the defendant union were notified of the notice to the Secretary of the Interior above-mentioned; and by withdrawing and similarly instructing the members of the defendant union of the withdrawal of any other notice to the effect that the Krug-Lewis agreement is not in full force and effect until the final determination of the basic issues arising under the said agreement.

We well realize the serious proportions of the fines here imposed upon the defendant union. But a majority feels that the course taken by the union carried with it such a serious threat to orderly constitutional government, and to the economic and social welfare of the nation, that a fine of substantial size is required in order to emphasize the gravity of the offense of which the union was found guilty. The defendant Lewis, it is true, was the aggressive leader in the studied and deliberate non-compliance with the order of the District Court; but, as the record shows, he stated in open court prior to imposition of the fines that "the representatives of the United Mine Workers determined that the so-called Krug-Lewis agreement was breached", and that it was the union's "representatives" who "notified the Secretary of the Interior that the contract was terminated as of November 20th". And certainly it was the members of the defendant union who executed the nationwide strike. Loyalty in responding to the orders of their leader may, in some minds, minimize the gravity of the miners' conduct; but we cannot ignore the effect of their action upon the rights of other citizens,

or the effect of their action upon our system of government. The gains, social and economic, which the miners and other citizens have realized in the past, are ultimately due to the fact that they enjoy the rights of free men under our system of government. Upon the maintenance of that system depends all future progress to which they may justly aspire. In our complex society, there is a great variety of limited loyalties, but the overriding loyalty of all is to our country and to the institutions under which a particular interest may be pursued.

We are aware that the defendants may have sincerely believed that the restraining order was ineffective and would finally be vacated. However, the Government had sought a declaration of its contractual rights under the Krug-Lewis agreement, effective since May 29, 1946, and solemnly subscribed by the Government and the defendant union. The restraining order sought to preserve conditions until the cause could be determined, and obedience by the defendants would have secured this result. They had full opportunity to comply with the order of the District Court, but they deliberately refused obedience and determined for themselves the validity of the order. When the rule to show cause was issued, provision was made for a hearing as to whether or not the alleged contempt was sufficiently purged. At that hearing the defendants stated to the court that their position remained then in the status which existed at the time of the issuance of the restraining order. Their conduct showed a total lack of respect for the judicial process. Punishment in this case is for that which the defendants had done prior to imposition of the judgment in the District Court, coupled with a coercive imposition upon the defendant union to compel obedience with the court's outstanding order.

We have examined the other contentions advanced by the defendants but have found them to be without merit. The temporary restraining order and the preliminary injunction were properly issued, and the actions of the District Court in these respects are affirmed. The judgment against the defendant Lewis is affirmed. The judgment against the defendant union is modified in accordance with this opinion, and, as modified, that judgment is affirmed.

So ordered.

MR. JUSTICE JACKSON joins in this opinion except as to the Norris-LaGuardia Act which he thinks relieved the courts of jurisdiction to issue injunctions in this class of case.

SUPREME COURT OF THE UNITED STATES

Nos. 759, 760, 781, 782 AND 811.—OCTOBER TERM, 1946.

The United States of America, Petitioner,
759 v.
United Mine Workers of America, an Unincorporated Association.

The United States of America, Petitioner,
760 v.
John L. Lewis, Individually and as President of the United Mine Workers of America.

United Mine Workers of America, an Unincorporated Association, Petitioner,
781 v.
The United States of America.

John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner,
782 v.
The United States of America.

United Mine Workers of America, an Unincorporated Association and John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner,
811 v.
The United States of America.

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.

[March 6, 1947.]

MR. JUSTICE FRANKFURTER, concurring in the judgment.

The historic phrase "a government of laws and not of men" epitomizes the distinguishing character of our political society. When John Adams put that phrase into

the Massachusetts Declaration of Rights he was not indulging in a rhetorical flourish. He was expressing the aim of those who, with him, framed the Declaration of Independence and founded the Republic. "A government of laws and not of men" was the rejection in positive terms of rule by fiat, whether by the fiat of governmental or private power. Every act of government may be challenged by an appeal to law, as finally pronounced by this Court. Even this Court has the last say only for a time. Being composed of fallible men, it may err. But revision of its errors must be by orderly process of law. The Court may be asked to reconsider its decisions, and this has been done successfully again and again throughout our history. Or, what this Court has deemed its duty to decide may be changed by legislation, as it often has been, and, on occasion, by constitutional amendment.

But from their own experience and their deep reading in history, the Founders knew that Law alone saves a society from being rent by internecine strife or ruled by mere brute power however disguised. "Civilization involves subjection of force to reason, and the agency of this subjection is law."[1] The conception of a government by laws dominated the thoughts of those who founded this Nation and designed its Constitution, although they knew as well as the belittlers of the conception that laws have to be made, interpreted and enforced by men. To that end, they set apart a body of men, who were to be the depositories of law, who by their disciplined training and character and by withdrawal from the usual temptations of private interest may reasonably be expected to be "as free, impartial, and independent as the lot of humanity will admit". So strongly were the framers of the Constitution bent on securing a reign of law that they endowed the judicial office with extraordinary safeguards and prestige. No one,

[1] Pound, *The Future of Law* (1937) 47 Yale L. J. 1, 13.

no matter how exalted his public office or how righteous his private motive, can be judge in his own case. That is what courts are for. And no type of controversy is more peculiarly fit for judicial determination than a controversy that calls into question the power of a court to decide. Controversies over "jurisdiction" are apt to raise difficult technical problems. They usually involve judicial presuppositions, textual doubts, confused legislative history, and like factors hardly fit for final determination by the self-interest of a party.

Even when a statute deals with a relatively uncomplicated matter, and the "words in their natural sense as they would be read by the common man" would appear to give an obvious meaning, considerations underlying the statute have led this Court to conclude that "the words cannot be taken quite so simply." See *Millburn Co.* v. *Davis Co.*, 270 U. S. 390, 400. How much more true this is of legislation like the Norris-LaGuardia Act. This Act altered a long process of judicial history, but altered it by a scheme of complicated definitions and limitations.

The Government here invoked the aid of a court of equity in circumstances which certainly were not covered by the Act with inescapable clarity. Colloquially speaking, the Government was "running" the mines. But it was "running" them not as an employer, in the sense that the owners of the coal mines were the employers of the men the day before the Government seized the mines. Nor yet was the relation between the Government and the men like the relation of the Government to the civil service employees in the Department of the Interior. It would be naive or wilful to assert that the scope of the Norris-La Guardia Act in a situation like that presented by this bill raised a question so frivolous that any judge should have summarily thrown the Government out of court without day. Only when a court is so obviously traveling outside its orbit as to be merely usurping

judicial forms and facilities, may an order issued by a court be disobeyed and treated as though it were a letter to a newspaper. Short of an indisputable want of authority on the part of a court, the very existence of a court presupposes its power to entertain a controversy, if only to decide, after deliberation, that it has no power over the particular controversy. Whether a defendant may be brought to the bar of justice is not for the defendant himself to decide.

To be sure, an obvious limitation upon a court cannot be circumvented by a frivolous inquiry into the existence of a power that has unquestionably been withheld. Thus, the explicit withdrawal from federal district courts of the power to issue injunctions in an ordinary labor dispute between a private employer and his employees cannot be defeated, and an existing right to strike thereby impaired, by pretending to entertain a suit for such an injunction in order to decide whether the court has jurisdiction. In such a case, a judge would not be acting as a court. He would be a pretender to, not a wielder of, judicial power.

That is not this case. It required extended arguments, lengthy briefs, study and reflection preliminary to adequate discussion in conference, before final conclusions could be reached regarding the proper interpretation of the legislation controlling this case. A majority of my brethren find that neither the Norris-LaGuardia Act nor the War Labor Disputes Act limited the power of the district court to issue the orders under review. I have come to the contrary view. But to suggest that the right to determine so complicated and novel an issue could not be brought within the cognizance of the district court, and eventually of this Court, is to deny the place of the judiciary in our scheme of government. And if the district court had power to decide whether this case was properly before it, it could make appropriate orders so as to afford

the necessary time for fair consideration and decision while existing conditions were preserved. To say that the authority of the court may be flouted during the time necessary to decide is to reject the requirements of the judicial process.

It does not mitigate such defiance of law to urge that hard-won liberties of collective action by workers were at stake. The most prized liberties themselves presuppose an independent judiciary through which these liberties may be, as they often have been, vindicated. When, in a real controversy, such as is now here, an appeal is made to law, the issue must be left to the judgment of courts and not the personal judgment of one of the parties. This principle is a postulate of our democracy.

And so I join the opinion of the Court insofar as it sustains the judgment for criminal contempt upon the broad ground of vindicating the process of law.[2] The records of this Court are full of cases, both civil and criminal, involving life or land or small sums of money, in which the Court proceeded to consider a federal claim that was not obviously frivolous. It retained such cases under its power until final judgment, though the claim eventually turned out to be unfounded and the judgment was one denying the jurisdiction either of this Court or of the court from which the case came. In the case before us, the District Court had power "to preserve the existing conditions" in the discharge of "its duty to permit argument and to take the time required for such consideration as it might need" to decide whether the controversy involved a labor dispute to which the Norris-LaGuardia Act applied. *United States* v. *Shipp*, 203 U. S. 563, 573, and *Howat* v. *Kansas*, 258 U. S. 181.

[2] Since, in my view, this was not a conviction for contempt in a case "arising under this Act" the jury provisions of § 11 of the Norris-LaGuardia Act do not apply. For obvious reasons, the petitioners do not claim that the Constitution of the United States affords them a right to trial by jury.

In our country law is not a body of technicalities in the keeping of specialists or in the service of any special interest. There can be no free society without law administered through an independent judiciary. If one man can be allowed to determine for himself what is law, every man can. That means first chaos, then tyranny. Legal process is an essential part of the democratic process. For legal process is subject to democratic control by defined, orderly ways which themselves are part of law. In a democracy, power implies responsibility. The greater the power that defies law the less tolerant can this Court be of defiance. As the Nation's ultimate judicial tribunal, this Court, beyond any other organ of society, is the trustee of law and charged with the duty of securing obedience to it.

It only remains to state the basis of my disagreement with the Court's views on the bearing of the Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C. § 101, and the War Labor Disputes Act, 57 Stat. 163, 50 U. S. C. App. § 1501. As to the former, the Court relies essentially on a general doctrine excluding the Government from the operation of a statute in which it is not named, and on the legislative history of the Act. I find the countervailing considerations weightier. The Norris-LaGuardia Act deprived the federal courts of jurisdiction to issue injunctions in labor disputes except under conditions not here relevant. The question before a court of equity therefore is whether a case presents a labor dispute as defined by the Act. Section 13 (c) defines "labor disputes":

> "The term 'labor dispute' includes any controversy concerning terms or conditions of employment . . . . regardless of whether or not the disputants stand in the proximate relation of employer and employee."

That the controversy before the district court comes within this definition does not need to be labored. The controversy arising under the Lewis-Krug contract con-

cerned "terms or conditions of employment" and was therefore a "labor dispute", whatever further radiations the dispute may have had. The Court deems it appropriate to interpolate an exception regarding labor disputes to which the Government is a party. It invokes a canon of construction according to which the Government is excluded from the operation of general statutes unless it is included by explicit language.

The Norris-LaGuardia Act has specific origins and definite purposes and should not be confined by an artificial canon of construction. The title of the Act gives its scope and purpose, and the terms of the Act justify its title. It is an Act "to define and limit the jurisdiction of courts sitting in equity". It does not deal with the rights of parties, but with the power of the courts. Again and again the statute says "no court shall have jurisdiction", or an equivalent phrase. Congress was concerned with the withdrawal of power from the federal courts to issue injunctions in a defined class of cases. Nothing in the Act remotely hints that the withdrawal of this power turns on the character of the parties. The only reference to parties underscores their irrelevance to the issue of jurisdiction, for the power of the courts is withdrawn in a labor dispute "regardless of whether or not the disputants stand in the proximate relation of employer and employee". The limitation on the jurisdiction of the court depends entirely on the subject matter of the controversy. Section 13 (a) defines it:

> "A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; . . ."

Neither the context nor the content of the Act qualifies the terms of that section. Did not the suit brought by the

Government against Lewis and the United Mine Workers "grow out of a labor dispute" within the terms of § 13 (a)?

As already indicated, the Court now finds an exception to the limitation which the Norris-LaGuardia Act placed upon the equity jurisdiction of the district court, not in the Act but outside it. It invokes a canon of construction that a sovereign is presumptively not intended to be bound by its own statute unless named in it. At best, this canon, like other generalities about statutory construction, is not a rule of law. Whatever persuasiveness it may have in construing a particular statute derives from the subject matter and the terms of the enactment in its total environment. "This rule has its historical basis in the English doctrine that the Crown is unaffected by acts of Parliament not specifically directed against it. . . . The presumption is an aid to consistent construction of statutes of the acting sovereign when their purpose is in doubt, but it does not require that the aim of a statute fairly to be inferred be disregarded because not explicitly stated." So wrote the late Chief Justice for the whole Court in *United States* v. *California*, 297 U. S. 175, 186, and this point of view was very recently applied in *United States* v. *Rice*, 327 U. S. 742, 749. It is one thing to read a statute so as not to bind the sovereign by restrictions, or to impose upon it duties which are applicable to ordinary citizens. It is quite another to interpolate into a statute limiting the jurisdiction of a court, the qualification that such limitation does not apply when the Government invokes the jurisdiction. No decision of this Court gives countenance to such a doctrine of interpolation. The text, context, content and historical setting of the Norris-LaGuardia Act all converge to indicate the unrestricted withdrawal by Congress from the federal district courts of the power to issue injunctions in labor disputes, excepting only under circumstances explicitly defined and not here pres-

ent. The meaning which a reading of the text conveys, and which is confirmed by the history which led Congress to free the federal courts from entanglements in these industrial controversies through use of the injunction, ought not to be subordinated to an abstract canon of construction that carries the residual flavor of the days when a personal sovereign was the law-maker.

Moreover, the rule proves too much. If the United States must explicitly be named to be affected, the limitations imposed by the Norris-LaGuardia Act upon the district court's jurisdiction could not deprive the United States of the remedies it theretofore had. Accordingly, the courts would not be limited in their jurisdiction when the United States is a party and the Act would not apply in any proceeding in which the United States is complainant. It would mean that, in order to protect the public interest, which may be jeopardized just as much whether an essential industry continued under private control or has been temporarily seized by the Government, a court could, at the behest of the Attorney General of the United States, issue an injunction as courts did when they issued the *Debs*, the *Hayes* and the *Railway Shopmen's* injunctions.[3] But it was these very injunctions, secured by the Attorney General of the United States under claim of compelling public emergency, that gave the most powerful momentum to the enactment of the Norris-LaGuardia Act. This history is too familiar to be rehearsed. It is surely surprising to conclude that when a long and persistent effort to take the federal courts out of the industrial conflict, insofar as the labor injunction put them into it, found its way to the statute books, the Act failed to meet the grievances that were most dramatic and deepest in the memory of those most concerned with the legislation.

[3] *United States* v. *Debs*, 64 Fed. 724, 158 U. S. 564; *United States* v. *Hayes*, unreported, D. Ind. 1919; *United States* v. *Railway Employees' Dept. A. F. L.*, 283 Fed. 479, 286 Fed. 228, 290 Fed. 978.

It is urged, however, that legislative history cuts down what might otherwise be the scope of the Act. Reliance is placed on statements by two Representatives during the House debates on the Bill, calculated to show that Congress purposed to exclude from the limitation of the jurisdiction of the district courts labor disputes involving "employees" of the Government, at least where injunctions are sought by the Attorney General. Since both statements came from spokesmen for the Bill, they carry weight. The nature of these remarks, the circumstances under which they were delivered, as well as their setting, define their meaning and the significance to be given them as a gloss upon the Act.

There was before the House an Amendment by Representative Blanton which would have made the Act applicable "except where the United States Government is the petitioner." (75 Cong. Rec. 5503.) Representative LaGuardia opposed the Amendment, remarking "I do not see how in any possible way the United States can be brought in under the provisions of this bill." If this is to be read apart from the meaning afforded by the context of the debates and the whole course of the legislation, it would mean that the jurisdiction to grant a *Debs* injunction continued unaffected. No one would have been more startled by such a conclusion than Mr. LaGuardia. The fact is that a situation like the present, where the Government for a time has some relation to a labor dispute in an essentially private industry, was evidently not in the thought of Congress. Certainly it was not discussed. Mr. LaGuardia's statement regarding the position of the United States under the Act followed his reading of § 13 (b) under which a person is to be deemed interested in a labor dispute only if "engaged in the same industry, trade, craft, or occupation in which such dispute occurs." His brief, elliptical remark plainly conveyed that the business of the Government of the United States is not an "indus-

try, trade, craft, or occupation." This is made unequivocally clear by the colloquy that followed. Mr. Blanton inquired whether Mr. LaGuardia was willing "for the Army and the Navy to form a labor union and affiliate themselves with the American Federation of Labor and not permit the Government of the United States to preserve its rights?" The short answer for Mr. LaGuardia to have made was "The United States is not subject to the provisions of the Act, because by employer we mean a private employer." Instead of that, Mr. LaGuardia replied, "Oh, the Army and the Navy are not in a trade, craft, or occupation." In short, the scope of the limitation upon the jurisdiction of the courts depended not on party, but on subject matter. Representative Blanton's amendment was rejected by 125 to 21.

The second Representative upon whom the Court relies is Mr. Michener. He said, "Be it remembered that this bill does not attempt to legislate concerning Government employees. I do not believe that the enactment of this bill into law will take away from the Federal Government any rights which it has under existing law, to seek and obtain injunctive relief where the same is necessary for the functioning of the Government." (75 Cong. Rec. 5464.) Later he added ". . . This deals with labor disputes between individuals, not where the Government is involved. It is my notion that under this bill the Government can function with an injunction, if that is necessary in order to carry out the purpose of the Government. I should like to see this clarified, but I want to go on record as saying that under my interpretation of this bill the Federal Government will not at any time be prevented from applying for an injunction, if one is necessary in order that the Government may function." (*Id.* at 5509.) What Mr. Michener gave as *his* interpretation of what survived the Norris-LaGuardia Act, was precisely the claim of the Government in asking for the *Debs* injunction. That

injunction was sought and granted in order that the Government might function. Insofar, then, as Mr. Michener's statements imply that the United States could again get a *Debs* injunction, his understanding is belied by the whole history of the legislation, as reflected in its terms.[4] These statements can only mean, then, that if, say, employees in the Treasury Department had to be enjoined so that government could go on, it was Representative Michener's view that an injunction could issue. No attempt was made to make this view explicit in the Act. It was not discussed, and only one statement appears to share it.[5] In any event, it does not imply a broader exemption than that of which Representative LaGuardia spoke:

It is to be noted that the discussion in the House followed passage in the Senate of that which subsequently became the Act. It is a matter of history that the Senate Judiciary Committee was the drafting and driving force behind the Bill. The Bill had extended consideration by a subcommittee of the Senate Judiciary Committee followed by weighty reports and full discussion on the Senate floor. We are not pointed to a suggestion or a hint in the Senate proceedings that the withdrawal of jurisdiction to issue injunctions in labor disputes was subject to a latent exception as to injunctions sought by the Government. The whole contemporaneous history is against it. The experience which gave rise to the Norris-LaGuardia Act only

[4] Compare Representative LaGuardia's reply to a proposed amendment by Representative Beck which would have exempted from the operation of the Act disputes "where the welfare, health, or lives of a public are concerned who are not parties to such labor dispute, or where a labor dispute involves the obstruction of any instrumentality of interstate or foreign commerce". Mr. LaGuardia claimed that the amendment was out of order because not germane to the purposes of the legislation. "The present bill refers only to disputes between employees and employer . . . The public is fully protected by penal and other statutes . . ." 75 Cong. Rec. 5503.

[5] See statement of Representative Schneider, 75 Cong. Rec. 5514.

underscores the unrestricted limitation upon the jurisdiction of the courts, except in situations of which this is not one. To find implications in the fact that in the course of the debates it was not explicitly asserted that the district courts could not issue an injunction in a labor controversy even at the behest of the Government is to find the silence of Congress more revealing than the natural meaning of legislation and the history which begot it. The remarks of Mr. LaGuardia and Mr. Michener ought not to be made the equivalent of writing an amendment into the Act. It is one thing to draw on all relevant aids for shedding light on the dark places of a statute. To allow inexplicit remarks in the give-and-take of debate to contradict the very terms of legislation and the history behind it is to put out the controlling light on meaning shed by the explicit provisions of an Act in its setting.

But even if we assume that the Act was not intended to apply to labor disputes involving "employees" of the United States, are the miners in the case before us "employees" of the United States within the meaning of this interpolated exception? It can hardly be denied that the relation of the miners to the United States is a hybrid one. Clearly, they have a relation to the Government other than that of employees of plants not under Government operation. Equally clearly, they have a relation and a status different from the relation and status of the clerks at the Treasury Department. Never in the country's history have the terms of employment of the millions in Government service been established by collective bargaining. But the conditions of employment—hours, wages, holidays, vacations, Health and Welfare Program, etc.—were so fixed for the miners during the period of Government seizure. The proper interpretation of this collective agreement between the Government and the United Mine Workers is precisely what is at the bottom of this contro-

versy. Neither a spontaneous nor a sophisticated characterization would resort to the phrase "Government employees" without more, in speaking of the miners during the operation of the mines by the Government. The only concrete characterization of the status of employees in seized plants was expressed by Under Secretary Patterson at a hearing on the predecessor bill to that which became the law under which this seizure was made. He spoke of the role of the Government as that of "A receiver that would be charged with the continuity of operation of the plant".[6] Nothing in the Acts authorizing seizure of private plants indicates that the employees of these plants were to be considered employees of the United States in the usual and natural meaning of the term. In the full

[6] Hearings on S. 2054 before a Subcommittee of the Committee on the Judiciary, Senate, 77th Cong., 1st Sess., p. 14. The characterization was accepted by members of the Committee which approved the Bill. *Id.* at pp. 16, 18, 130. Senator Connally refers to the private employer who "will continue to operate it under the supervision of the Government". *Id.* at 55. See also p. 77. While at one point he referred to the United States as an employer (*id.* at 129), he did so in a special context for the purposes of a discussion about collective bargaining with reference to wages. As to wages, of course, the Government would stand *in loco* "employer" during its operation of the plant.

The analogy of equity receivership is not inapt. In a limited sense, employees of plants in receivership in a federal court may be considered employees of the United States, since the operation of the plant is under the jurisdiction and control of a United States officer. But no one aware of the background of mischief which the Act was intended to remedy could find an intention in Congress to allow injunctions in labor disputes involving plants in receivership. Compare *Trainmen* v. *Toledo, P. & W. R. Co.*, 321 U. S. 50, 55, 58–61. No series of cases contributed more to the feeling that the federal courts abused their equity jurisdiction than those involving employees of railroads in equity receivership. See, *e. g.*, 1 Gresham, Life of Walter Quintin Gresham, cc. XXIII to XXV; Gregory, Labor and the Law, 95–97; Nelles, *A Strike and Its Legal Consequences—An Examination of the Receivership Precedent for the Labor Injunction* (1931) 40

debates on bills providing for Government seizure of plants, Congressional leaders clearly indicated their understanding that as the law then stood there could be no injunctions in labor disputes in seized plants.[7]

But not only was such the understanding when the legal question emerged in the course of considering the need of war legislation. Recent legislation and its history are relevant not merely because they show later understanding of the terms of an older statute. The War Labor Disputes Act of 1943 is directly and primarily involved in this case. The whole controversy arises under the authority to seize mines given by that Act. The real question before us is whether in authorizing such seizure and operation Congress also gave to the United States

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Yale L. J. 507; *passim*. If injunctions will not issue in disputes involving employees of railroads or other industries in receivership under operation by the federal courts, nothing relevant to the construction of the statute warrants the inference that Congress allowed the injunction to be available in disputes involving employees of plants in "receivership" under operation of the Secretary of the Interior.

[7] See especially the debates on a proposed amendment to the Smith-Connally Bill whereby Senator Connally sought to add the injunction as a remedy against violation of the Act.

"MR. CONNALLY. . . . The provision is limited to plants which the Government takes over. It would not change the Norris-LaGuardia Act in any respect, *except in the one particular case.*

* * *

"MR. LANGER. Mr. President, is it not true that unless section 5 is stricken from the bill that a portion of the Norris-LaGuardia Act will be repealed?

"MR. DANAHER. It would certainly be overridden; . . ." (Emphasis supplied.) 89 Cong. Rec. 3988–89.

See also the statements of Senators Taft, Vandenberg, and Wagner, and compare those of Senators Revercomb and Barkley; and see the colloquy between Senators Connally and Vandenberg, *id.* at 3966, quoted *infra* note 10.

the right to prevent interference with its statutory operation through the equitable remedies here invoked.

By the War Labor Disputes Act Congress created a new relationship among the Government, the plant owners, the employees. The rights, duties, remedies incident to that relation are those given by the Act. Congress naturally addressed itself to possible interferences with the Government's operation of seized plants. It dealt specifically with this subject. It gave the Government specific remedies which it might invoke against such interference.[8] Remedy by injunction was not given. It was not merely omitted. A fair reading of the legislative history shows that it was expressly and definitively denied. As reported out of the Senate Committee, S. 796 provided for plant seizure. It did not include the injunction among the remedies for interference with Government operation.[9] But when the Bill reached the floor of the Senate, Senator Connally, sponsor of the Bill, offered and urged an amendment giving the district courts jurisdiction to restrain violations of the measure.[10] He accepted, somewhat reluctantly, the amendment of Senator Wagner to limit the proposed

[8] 57 Stat. 163, 165–66, 50 U. S. C. App. § 1506 (b).

[9] S. Rep. No. 147, 78th Cong., 1st Sess.

[10] 89 Cong. Rec. 3809. And see p. 3906:

"MR. VANDENBERG. . . .

"I am very anxious that there shall be additional statutory protection to the uninterrupted production of war necessities, but I am wondering whether in order to achieve that purpose it is necessary for me to impinge upon a very profound hostility I have always had to the use of injunctions in labor disputes. I voted for the original Norris-LaGuardia Act, and I have always felt that one of the most useful things we ever did, not only as a matter of fair play, but in respect to the status of the courts was substantially to separate from court jurisdiction the responsibility of, in effect, umpiring labor disputes.

"What I wish to ask the able Senator from Texas, if I may, is this: In his proposal, on page 4, it is provided that any person who will-

amendment to an injunction at the behest of the Attorney General, precisely as was here sought and granted.[11] On motion of Senator Danaher, this proposal was rejected by the Senate after full debate,[12] participated in by Senators especially conversant with the history and scope of the

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fully violates any provision of the act is to be guilty of a felony, and subject to a fine or imprisonment. Is not that a conclusive penalty? Is it necessary in addition to go back into all the old injunctive process in connection with labor disputes?

"MR. CONNALLY. That is not a legal inquiry really. Of course, it might be that we could get along without the provision. Like the Senator, I voted for the Norris-LaGuardia Act, and I favored the policy embodied therein. This provision, however, applies only to plants taken over by the Government. It seems to me that if the Government is to operate a plant, it should have the widest and the fullest authority to operate it as it wants to do and to prevent interruption. Therefore, because of the attitude of some who were interested in the bill, I inserted section 5. I do not think the bill would be very seriously crippled if it were eliminated, but I think it is improved by its remaining in. I do not think it would be fatal to strike out that provision, but I hope that will not be done.

"MR. VANDENBERG. I thank the Senator for his frank statement. When the Government has taken over the operation of a plant and it becomes in essence a Government operation, it is rather difficult to resist the argument that the Government should not be deprived of any instrumentality in the enforcement, virtually of its sovereignty.

"MR. CONNALLY. That is true.

"MR. VANDENBERG. Nevertheless, I apprehend that the very fact that the injunctive process is restored in the Senator's bill is the reason why it appears in the additional amendment offered by the able Senator from Ohio, where, it seems to me, it becomes decidedly more offensive, using that word in the sense in which I have used it."

The reference is to an amendment proposed by Senator Taft authorizing injunctions in any circuit court of appeals at the request of the Attorney General in case of failure to obey orders of the War Labor Board, or whenever "operations are hindered or reduced by lockout, strike, or otherwise". This applied apparently to plants in private operation. 89 Cong. Rec. 3897–98. Compare the Bill passed by the House, note 14.

[11] 89 Cong. Rec. 3907, 3988–89.

[12] *Id.* at 3989.

existing remedies available to the Government. With this remedy denied to the Government, the Bill was passed and sent to the House.[13] The House did not like the Bill. Its version did not see fit specifically to add to the limited seizure provisions of the Selective Service Act of 1940, although apparently it assumed that there could be seizure under existing law in the case of failure by defense plants to produce as a result of labor troubles. Instead, the House version provided stringent anti-strike and anti-lockout provisions as to plants in private operation, and by specific amendment to the Norris-LaGuardia Act the district courts were authorized to restrain violations of such provisions. But this *pro tanto* repeal of the Norris-LaGuardia Act was not made available to the United States as a remedy against interference with operation of plants seized under the earlier, 1940 Act.[14]

The bill then went to conference. What came out was, so far as here material, the bill that had passed the Senate. The United States was granted power to seize and operate defense plants whose production was hampered by labor disputes. Specific remedies were formulated by Congress against interference with the Government's operation. The injunction was not included.[15] In neither house was further attempt made to reintroduce the Connally proposal giving the Government relief by injunction. Nor was it suggested that the Government had such redress under existing law. On the floor of the Senate, Senator Thomas of Utah, Chairman of the Committee on Education and Labor, said:

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[13] *Id.* at 3093.

[14] Compare § 4 (b) and (c) with § 12 (a) and (b), 89 Cong. Rec. 5382–83. For the earlier seizure provisions see 54 Stat. 885, 892, 50 U. S. C. App. § 309.

[15] See Conference Report on S. 796, H. R. No. 531, 78th Cong., 1st Sess.

"Mr. President, I ask the Senator from New Mexico [Mr. Hatch], the Senator from Connecticut [Mr. Danaher], and the Senator from Texas [Mr. Connally], the sponsor of the bill, whether there is a unanimous opinion on the part of those three great lawyers that there will not be a reopening of the district courts to industry-labor disputes? . . . I should like that point to be made so firmly and so strongly that no lawyer in the land who would like to take advantage of the situation created by the mere mention of the words 'district court' will resort to the court in order to confuse our industry-labor relations."

Mr. Connally answered:

"Mr. President, . . . I think I speak for the Senator from Vermont and the Senator from New Mexico and the Senator from Connecticut and also the Senator from Indiana [Mr. Van Nuys], although he is not present, when I say that there is no jurisdiction whatever conferred by this bill providing for resort to the United States district court, except the one mentioned by the Senator from Connecticut, which is merely the right to go there for a civil action for damages, and no jurisdiction whatever is given over labor disputes. Does that answer the Senator?"

"MR. THOMAS of Utah. I thank the Senator for making that statement and I hope it will satisfy the lawyers of the country.

"MR. CONNALLY. I am sure it will." [16]

Under these circumstances the Bill became law, and the seizure giving rise to this controversy was made under that law. The separate items of this legislative history cannot be judged in isolation. They must be considered together, and as part of the course of legislation dealing with injunctions in labor disputes. To find that the Government has the right which Senator Connally's amendment sought to confer but which the Congress withheld is to say that voting down the amendment had the same effect as voting it up.

[16] 89 Cong. Rec. 5754. The Senators mentioned by Mr. Connally were the managers on the part of the Senate of the bill in conference.

Events since the passage of the Act underscore what would appear to be the controlling legislative history of the War Labor Disputes Act, and prove that Congress saw fit not to authorize district courts to issue an injunction in cases like this. To meet the grave crisis growing out of the strike on the railroads last May, Congress, upon the recommendation of the President and the Attorney General, deemed additional legislation necessary for dealing with labor disputes. The proposals in each house carried a provision which authorized an injunction to issue for violation of the War Labor Disputes Act.[17] Senator Meade proposed an amendment to delete the provisions for injunctions.[18] In the debates that followed no one suggested that the new proposal was unnecessary, that the jurisdiction proposed to be conferred already existed, or that if granted, as requested by the Attorney General, it would not, as Senator Meade claimed, repeal *pro tanto* the Norris-LaGuardia Act. The debates show clearly that what was contemplated was a change in the War Labor Disputes Act, whereby a new and an additional remedy would be authorized.[19] The Bill never became law.

As is well known, as the debates clearly show, as Senator Connally admitted, the War Labor Disputes Act was directed primarily against stoppage in the coal mines.[20] The situation that Congress feared was exactly that which has

[17] H. R. 6578, 79th Cong., 2d Sess.

[18] Cong. Rec. 6166.

[19] See, particularly, the statements of Senator Meade (P. 6171), Senator Morse (p. 6169), Senator Pepper (pp. 6169, 6170), Senator Wagner (p. 6170), Senator Wheeler (p. 6172), Senator Barkley (p. 6175), Senator Fullbright (p. 6171).

[20] Senator Connally said: "Mr. Lewis appeared before the Truman Committee 3 or 4 weeks ago. I happen to be a member of that committee, and when he said he did not regard his no-strike agreement as binding . . . I determined then that if I could get this bill before the Senate, I was going to bring it up and press it in order

occurred and which underlies this controversy. To deal with the situation, Congress gave the United States the power to seize the mines. To effectuate this power, the Government was given authority to invoke criminal penalties for interferences with the operation of the mines. Senator Connally sought more. He wanted Congress to empower the district courts to enjoin interference. The Senate did not want an injunction to issue and voted the proposal down. The Senate's position was adopted by the Conference Committee. The House of Representatives yielded its view and approved the Conference report. The whole course of legislation indicates that Congress withheld the remedy of injunction. This Court now holds that Congress authorized the injunction.

I concur in the Court's opinion insofar as it is not inconsistent with these views, and, under the compulsion of the ruling of the majority that the court below had jurisdiction to issue its orders, I join in the Court's judgment.

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that if he did disregard the agreement, the President or the Government of the United States would have a weapon with which to meet the threat and the danger." 89 Cong. Rec. 3886. See also H. Rep. No. 440, 78th Cong., 1st Sess., p. 6. The references to the coal situation in the debates are innumerable. See, *e. g.*, 89 Cong. Rec. 3767, 3886, 3888, 3889, 3900–01.

SUPREME COURT OF THE UNITED STATES

Nos. 759, 760, 781, 782 AND 811.—OCTOBER TERM, 1946.

The United States of America, Petitioner,
759 v.
United Mine Workers of America, an Unincorporated Association.

The United States of America, Petitioner,
760 v.
John L. Lewis, Individually and as President of the United Mine Workers of America.

United Mine Workers of America, an Unincorporated Association, Petitioner,
781 v.
The United States of America.

John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner,
782 v.
The United States of America.

United Mine Workers of America, an Unincorporated Association and John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner,
811 v.
The United States of America.

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.

[March 6, 1947.]

MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS, concurring in part and dissenting in part.

For the reasons given in the Court's opinion, we agree that neither the Norris-LaGuardia Act nor the War

Labor Disputes Act barred the Government from obtaining the injunction it sought in these proceedings. The "labor disputes" with which Congress was concerned in the Norris-LaGuardia Act were those between private employers and their employees. As to all such "labor disputes," the Act drastically limited the jurisdiction of federal courts; it barred relief by injunction except under very narrow circumstances, whether injunction be sought by private employers, the Government, or anyone else. But the attention of Congress was neither focused upon, nor did it purport to affect, "labor disputes", if such they can be called, between the Government and its own employees. There was never an intimation in the progress of the Act's passage that a labor dispute within the Act's meaning would arise because of claims against the Government asserted collectively by employees of the Interior, State, Justice, or any other Government department. Congress had never in its history provided a program for fixing wages, hours, and working conditions of its employees by collective bargaining. Working conditions of Government employees had not been the subject of collective bargaining, nor been settled as a result of labor disputes. It would require specific congressional language to persuade us that Congress intended to embark upon such a novel program or to treat the Government employer-employee relationship as giving rise to a "labor dispute" in the industrial sense.

We have no doubt that the miners became Government employees when the Government took over the mines. It assumed complete control over the mines and their operation. The fact that it utilized the managerial forces of the private owners does not detract from the Government's complete authority. For whatever control Government agents delegated to the private managers, those agents had full power to take away and exercise themselves. If we thought, as is here contended, that the

Government's possession and operation of the mines were not genuine, but merely pretended, we should then say that the Norris-LaGuardia Act barred these proceedings. For anything less than full and complete Government operation for its own account [1] would make this proceeding the equivalent of the Government's seeking an injunction for the benefit of the private employers. We think the Norris-LaGuardia Act prohibits that. But as we read the War Labor Disputes Act and the President's order taking over the mines against the background of circumstances which prompted both, we think, apparently contrary to the implications of the regulations, that the Government operates these mines for its own account as a matter of law; [2] and those who work in them, during the period of complete Government control, are employees of the Government.

Since the Norris-LaGuardia Act is inapplicable, we agree that the District Court had power in these proceed-

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[1] An analogy is a taking by the Government of a leasehold interest in property in whole or in part. See *United States* v. *Petty Motor Co.*, 327 U. S. 372.

[2] Section 9 of the Selective Service Act, 54 Stat. 892, 50 U. S. C. App. § 309, granted power "to take immediate possession of any . . . plant . . . and through the appropriate branch, bureau, or department of the Army or Navy to manufacture therein such product . . . as may be required. . . ." And it provides for payment: "The compensation to be paid . . . as rental for use of any manufacturing plant while used by the United States, shall be fair and just. . . ." Section 3 of the War Labor Disputes Act, 57 Stat. 164, 50 U. S. C. App. Supp. V § 309, extended this authority to include power to take immediate possession of any "mine . . . equipped for the manufacture, production, or mining of any articles or materials which may be required for the war effort . . . whenever the President finds . . . and proclaims that there is an interruption of the operation of such . . . mine . . . as a result of a strike or other labor disturbance . . . and that the exercise of such power and authority is necessary to insure the operation of such . . . mine . . . in the interest of the war effort."

ings to enter orders necessary to protect the Government against an invasion of the rights it asserted, pending adjudication of the controversy its complaint presented to the court. It is therefore unnecessary for us to reach the question of whether the District Court also had power to enter these orders under the doctrine of *United States* v. *Shipp*, 203 U. S. 263.

We agree that the court had power summarily to coerce obedience to those orders and to subject defendants to such conditional sanctions as were necessary to compel obedience. And we agree that in such civil contempt proceedings to compel obedience, it was not necessary for the court to abide by all the procedural safeguards which surround trials for crime. Without such coercive powers, courts could not settle the cases and controversies before them. Courts could not administer justice if persons were left free pending adjudication to engage in conduct which would either immediately interrupt the judicial proceedings or so change the *status quo* of the subject matter of a controversy that no effective judgment could be rendered. Disorder in the courtroom, or so near to it as to interrupt a trial, and disobedience of an affirmative court order, are typical examples of offenses which must necessarily be dealt with summarily. To remove such imminent interference with orderly judicial proceedings, courts must have power to act immediately. In recognition of this fact, the contempt power came into existence.[3] This power is of ancient lineage,[4]

[3] See *e. g.*, *Cooke* v. *United States*, 267 U. S. 517, 534–537; Fox, Contempt of Court (1927) B; Beale, *Contempt of Court*, 21 Harv. L. Rev. (1908) 161, 169–170.

[4] "As early as the time of Richard III it was said that the chancellor of England compels a party against whom an order is issued by imprisonment; [2 R. III, 9, pl. 22] and a little later it was said in the chancery that 'a decree does not bind the right, but only binds the person to obedience, so that if the party will not obey, then the chancellor may commit him to prison till he obey, and that it is all the chancellor can do.' [27 H. VIII, 15.] This imprisonment was

has always been exercised by our courts, and has the express recognition of Congress under the name of contempt. Rev. Stat. § 725, 28 U. S. C. § 385. Where the court exercises such coercive power, however, for the purpose of compelling future obedience, those imprisoned "carry the keys of their prison in their own pockets," *In re Nevitt*, 117 F. 448, 461; by obedience to the court's valid order, they can end their confinement; and the court's coercive power in such a "civil contempt" proceeding ends when its order has been obeyed. *Gompers* v. *Buck Stove & Range Co.*, 221 U. S. 417, 441, 445. See also *Doyle* v. *London Guaranty Co.*, 204 U. S. 599, 607. The District Court did not enter a conditional decree here. But this Court has modified the District Court's decree to provide as part of the judgment such a coercive sanction in the form of a conditional fine. We agree with the Court's decision in this respect.

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by no means a punishment, but was merely to secure obedience to the writ of the king. Down to within a century it was very doubtful if the chancellor could under any circumstances inflict punishment for disobedience of a decree. If the decree commanded the defendant to transfer property, the chancellor acquired power as early as the sixteenth century to sequester the property as security for performance; but if the decree were for the doing of any other act, or were a decree for an injunction, the chancellor was helpless if he could not compel obedience by imprisonment. . . . In any case, the contempt of a defendant who had violated a decree in chancery could be purged by doing the act commanded and paying costs; or, if his disobedience had been the violation of a negative injunction, he could purge himself of contempt by undoing what he had done and paying costs." Beale, *supra*.

"In the case of contempt in violating an order or decree of a court of equity, we have an entirely different problem. . . . If the court limits itself to its proper action in such cases, namely, process of imprisonment merely to prevent the violation of the decree, and if the imprisonment is to cease as soon as the danger of disobedience has ceased, the jury, which is thought necessary to pass upon the desert of a defendant to suffer punishment, is not required. . . . So far,

The *Gompers* decision and many others have pointed out that the object of such coercive contempt proceedings is not to punish for an offense against the public, but to compel obedience to valid court orders. Yet the decision of this Court also approves unconditional fines as criminal punishment for past disobedience. We cannot agree to this aspect of the Court's judgment. At a very early date this Court declared, and recently it has reiterated, that in contempt proceedings courts should never exercise more than "the least possible power adequate to the end proposed." *Anderson* v. *Dunn*, 6 Wheat. 204, 231; *In re Michael*, 326 U. S. 224, 227.

In certain circumstances criminal contempt culminating in unconditional punishment for past disobedience may well constitute an exercise of "the least possible power adequate to the end proposed." Thus in situations which would warrant only a use of coercive sanctions in the first instance, criminal punishment might be appropriate at a later stage if the defendant should persist in disobeying the order of the court. Without considering the constitutional requisites of such criminal punishment, we believe the application of it inappropriate and improper here. The imposition of criminal punishment here was an exercise of far more than "the least possible power adequate to the end proposed." For here the great and legitimate "end proposed" was affirmative action by the defendants to prevent interruption of coal production pending final adjudication of the controversy. Coercive sanctions suffi-

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therefore, as popular clamor demands a trial by jury in such case, it seems to go beyond the requirements of justice; and the statutes which commit the trial of questions of fact in such process to a jury are not likely permanently to prove satisfactory. This statement, however, is to be limited to cases of merely preventive imprisonment. Where the court inflicts a definite term of imprisonment by way of punishment for the violation of its orders, the case does not differ, it would seem, from the case of criminal contempt out of court, and regular process and trial by jury should be required." *Id.* 173–174.

cient to accomplish this end were justified. From the record we have no doubt but that a conditional civil sanction would bring about at least as prompt and unequivocal obedience to the court's order as would criminal punishment for past disobedience. And this would accomplish a vindication of the District Court's authority against a continuing defiance. Consequently, we do not believe that the accomplishment of the justifiable "end proposed" called for summary criminal punishment which is designed to deter others from disobedience to court orders or to avenge a public wrong, rather than the imposition of a coercive sanction. And for the reasons stated by MR. JUSTICE RUTLEDGE, we think that the flat $700,000 criminal fine against the defendant union is excessive by constitutional and statutory standards.

In determining whether criminal punishment or coercive sanction should be employed in these proceedings, the question of intent—the motivation of the contumacy—becomes relevant. Difficult questions of law were presented by this case. It is plain that the defendants acted willfully for they knew that they were disobeying the court's order. But they appear to have believed in good faith, though erroneously, that they were acting within their legal rights. Many lawyers would have so advised them. This does not excuse their conduct; the whole situation emphasized the duty of testing the restraining order by orderly appeal instead of disobedience and open defiance. However, as this Court said in *Cooke* v. *United States*, 267 U. S. 517, 538, "the intention with which acts of contempt have been committed must necessarily and properly have an important bearing on the degree of guilt and the penalty which should be imposed."

We think it significant that the conduct which was prohibited by the restraining order for violation of which these defendants have been punished for contempt is also punishable under the War Labor Disputes Act. That Act

provides a maximum punishment of $5,000 fine and one year imprisonment for those who interfere with the operation of mines taken over by the United States. Had the defendants been tried under that statute, their punishment would have been limited thereby and in their trial they would have enjoyed all the constitutional safeguards of the Bill of Rights. Whatever constitutional safeguards are required in a summary contempt proceeding, whether it be for criminal punishment, or for the imposition of coercive sanction, we must be ever mindful of the danger of permitting punishment by contempt to be imposed for conduct which is identical with an offense defined and made punishable by statute. *In re Michael, supra.*[*]

The situation of grave emergency facing the country when the District Court acted called for the strongest measures—measures designed to produce quick and unqualified obedience of the court's order. If the $10,000 fine on defendant Lewis and the $3,500,000 fine on the defendant union be treated as coercive fines, they would not necessarily be excessive. For they would then be payable only if the defendants continued to disobey the court's order. Defendants could then avoid payment by purging themselves. The price of continued disobedience would be the amount of the fines. See *Doyle* v. *London Guaranty Co., supra,* 602. The fines would be fixed so as

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[*] See also *In re Debs,* 158 U. S. 564; *Gompers* v. *Buck Stove & Range Co.,* 221 U. S. 418; *Gompers* v. *United States,* 233 U. S. 604, 610, 611; *Ex parte Grossman,* 267 U. S. 87; *Ex parte Hudgings,* 249 U. S. 378, 383; *Michaelson* v. *United States,* 266 U. S. 42; *Blackmer* v. *United States,* 284 U. S. 421, 440; *Nye* v. *United States,* 313 U. S. 33; *Bridges* v. *California,* 314 U. S. 252, 264; *Pendergast* v. *United States,* 317 U. S. 412; *In re Bradley,* 318 U. S. 50. Frankfurter and Landis, *Power of Congress Over Procedure in Criminal Contempts in Inferior Federal Courts,* 37 Harv. L. Rev. 1010, 1043–1045 (1924) and authorities there collected; Nelles and King, *Contempt by Publications in the United States,* 28 Col. L. Rev. 401 (1928).

to produce the greatest likelihood that they would compel obedience.

We should modify the District Court's decrees by making the entire amount of the fines payable conditionally. On December 7, 1946, Mr. Lewis directed the mine workers to return to work until midnight, March 31, 1947. But, so far as we are aware, the notice which purported to terminate the contract has not been withdrawn. Thus, there has been, at most, only a partial compliance with the temporary injunction.

Hence our judgment should provide that the defendants pay their respective fines only in the event that full and unconditional obedience to the temporary injunction, including withdrawal of the notice which purported to terminate the contract, is not had on or before a day certain.

SUPREME COURT OF THE UNITED STATES

Nos. 759, 760, 781, 782 AND 811.—OCTOBER TERM, 1946.

The United States of America, Petitioner, v. United Mine Workers of America, an Unincorporated Association.	
The United States of America, Petitioner, v. John L. Lewis, Individually and as President of the United Mine Workers of America.	
United Mine Workers of America, an Unincorporated Association, Petitioner, v. The United States of America.	On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.
John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner, v. The United States of America.	
United Mine Workers of America, an Unincorporated Association, and John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioners, v. The United States of America.	

[March 6, 1947.]

MR. JUSTICE MURPHY, dissenting.

An objective reading of the Norris-LaGuardia Act removes any doubts as to its meaning and as to its appli-

cability to the facts of this case. Section 4 provides in clear, unmistakable language that "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute . . ." That language, which is repeated in other sections of the Act, is sufficient by itself to dispose of this case without further ado. But when proper recognition is given to the background and purpose of the Act, it becomes apparent that the implications of today's decision cast a dark cloud over the future of labor relations in the United States.

Due recognition must be given to the circumstances that gave rise to this case. The Government was confronted with the necessity of preserving the economic health of the nation; dire distress would have eventuated here and abroad from a prolonged strike in the bituminous coal mines. It was imperative that some effective action be taken to break the stalemate. But those factors do not permit the conversion of the judicial process into a weapon for misapplying statutes according to the grave exigencies of the moment. That can have tragic consequences even more serious and lasting than a temporary dislocation of the nation's economy resulting from a strike of the miners.

The whole thrust of the Norris-LaGuardia Act is directed toward the use of restraining orders and injunctions in cases arising out of labor disputes between private employers and private employees. It was in that setting that the abuses of federal equity power had flourished; and it was those abuses that led to the adoption of the Act. The application of the Act to the instant situation is thus clear. It cannot be denied that this case is one growing out of a labor dispute between the private coal operators and the private miners. That is a matter of common knowledge. Executive Order No. 9728, which authorized the Secretary of the Interior to take possession of and to

operate the coal mines, explicitly stated that this action was taken "as a result of existing or threatened strikes and other labor disturbances." Those strikes and labor disturbances grew out of the relations between the operators and the miners. The Government further recognized that fact by its subsequent refusal to negotiate with the miners on their demands and its insistance that these demands be addressed to the private mine owners. It is precisely in situations arising out of disputes of this nature that Congress has said that no court of the United States shall have jurisdiction to issue any restraining order or injunction.

The crux of this case is whether the fact that the Government took over the possession and operation of the mines changed the private character of the underlying labor dispute between the operators and the miners so as to make inapplicable the Norris-LaGuardia Act. The answer is clear. Much has been said about the Government's status as employer and the miners' status as Government employees following the seizure. In my opinion, the miners remained private employees despite the temporary gloss of Government possession and operation of the mines; they bear no resemblance whatever to employees of the executive departments, the independent agencies and the other branches of the Government. But when all is said and done, the obvious fact remains that this case involves and grows out of a labor dispute between the operators and the miners. Government seizure of the mines cannot hide or change that fact. Indeed, the seizure took place only because of the existence of the dispute and because it was thought some solution might thereafter result. The dispute, however, survived the seizure and is still very much alive. And it still retains its private character, the operators on the one side and the coal miners on the other.

The important point, and it cannot be overemphasized, is that Congress has decreed that strikes and labor disturbances growing out of private labor disputes are to be dealt with by some means other than federal court restraining orders and injunctions. Further confirmation, if any be needed, is to be found in the terms and in the history of the War Labor Disputes Act. To this clearly enunciated policy of making "government by injunction" illegal, Congress has made no exception where the public interest is at stake or where the Government has seized the private properties involved. Congress can so provide. But it has not done so as yet; until it does, we are not free to sanction the use of restraining orders and injunctions in a case of this nature.

The Government's seizure of the coal mines thus becomes irrelevant to the issue. The federal equity power to issue restraining orders and injunctions simply cannot be invoked in this case, since it grows out of a private labor dispute. And it makes no difference that the party seeking the proscribed relief is the Government rather than a private employer. The touchstone of the Norris-LaGuardia Act is the existence of a labor dispute, not the status of the parties. Among the specific evils which the framers of the Act had in mind were the injunctions secured by the Government in the *Debs*, the *Hayes* and the *Railway Shopmen's* cases. The Act was drawn to prevent, among other things, the recurrence of such injunctions. The Government concededly could not obtain an injunction in a private labor dispute where there has been no seizure of private properties, no matter how great the public interest in the dispute might be. To permit the Government to obtain an injunction where there has been a seizure would equally flout the language and policy of the Act. In whatever capacity the Government acts, this statute closes the doors of the federal courts where a restraining order or injunction is sought in a case arising out of a private labor dispute.

Moreover, if seizure alone justifies an injunction contrary to the expressed will of Congress, some future Government could easily utilize seizure as a subterfuge for breaking any or all strikes in private industries. Under some war-time or emergency power, it could seize private properties at the behest of the employers whenever a strike threatened or occurred on a finding that the public interest was in peril. A restraining order could then be secured on the specious theory that the Government was acting in relation to its own employees. The workers would be effectively subdued under the impact of the restraining order and contempt proceedings. After the strike was broken, the properties would be handed back to the private employers. That essentially is what has happened in this case. That is what makes the decision today so full of dangerous implications for the future. Moreover, if the Government is to use its seizure power to repudiate the Norris-LaGuardia Act and to intervene by injunction in private labor disputes, that policy should be determined by Congress. It is not the function of this Court to sanction that policy where Congress has remained silent. Once Congress has spoken, it will be time enough to consider the constitutional issues raised by an application of that policy.

Since in my view the restraining order and the temporary injunction in this case are void and without effect, there remains for me only the contention that the defendants are guilty of criminal contempt for having willfully ignored the void restraining order. It is said that the District Court had the power to preserve existing conditions while it was determining its own authority to grant injunctive relief; hence the defendants acted at their own peril in disobeying the restraining order. Eloquent pleas are made for the supremacy of the judiciary over the individual and the requirement that a person obey court orders until they are reversed by orderly

and proper proceedings. Heavy emphasis is placed upon *United States* v. *Shipp*, 203 U. S. 563.

These arguments have a seductive attractiveness here. Ordinarily, of course, it is better policy to obey a void order than run the risk of a contempt citation. And as a general proposition, individuals cannot be allowed to be the judges of the validity of court orders issued against them. But the problem raised by the violation of the restraining order in this case must be viewed against the background and language of the Norris-LaGuardia Act.

Unlike most other situations, this Act specifically prohibits the issuance of restraining orders except in situations not here involved. There is no exception in favor of a restraining order where there is some serious doubt about the court's jurisdiction; indeed, the prohibition against restraining orders would be futile were such an exception recognized for the minds of lawyers and judges are boundless in their abilities to raise serious jurisdictional objections. And so Congress has flatly forbidden the issuance of all restraining orders under this Act. It follows that when such an order is issued despite this clear prohibition, no man can be held in contempt thereof, however unwise his action may be as a matter of policy. When he violates the void order, 28 U. S. C. § 385 comes into operation, forbidding punishment for contempt except where there has been disobedience of a "lawful writ, process, order, rule, decree, or command" of a court.

This absolute outlawry of restraining orders in cases involving private labor disputes is not without reason. The issuance of such orders prior to the adoption of the Norris-LaGuardia Act had a long and tortured history. Time and again strikes were broken merely by the issuance of a temporary restraining order, purporting to maintain the *status quo*. Because of the highly fluid character of labor disputes, the delay involved in testing an order of that nature often resulted in neutralizing the rights of

employees to strike and picket. And too often, these orders did more than stabilize existing conditions; they called for affirmative change. The restraining order in the instant case is but one example of this. While purporting to preserve the *status quo*, it actually commands the defendants to rescind the strike call—thereby affirmatively interfering with the labor dispute.

Congress was well aware of this use of restraining orders to break strikes. After full consideration, it intentionally and specifically prohibited their use, with certain exceptions not here relevant. We are not free to disregard that prohibition. Hence the doctrine of the *Shipp* case has no relation whatever to our present problem. That case dealt with an order of this Court staying the execution of a convicted felon, an order which lay within the recognized power of this Court and which had not been validly prohibited by Congress. Naturally, no man could violate that order with impunity. But we are acting here in the unique field of labor relations, dealing with a type of order which Congress has definitely proscribed. If we are to hold these defendants in contempt for having violated a void restraining order, we must close our eyes to the expressed will of Congress and to the whole history of equitable restraints in the field of labor disputes. We must disregard the fact that to compel one to obey a void restraining order in a case involving a labor dispute and to require that it be tested on appeal is to sanction the use of the restraining order to break strikes—which was precisely what Congress wanted to avoid. Every reason supporting the salutary principle of the *Shipp* case breaks down when that principle is applied in this setting. I would therefore reverse the judgment of the District Court *in toto*.

It has been said that the actions of the defendants threatened orderly constitutional government and the economic and social stability of the nation. Whatever

may be the validity of those statements, we lack any power to ignore the plain mandates of Congress and to impose vindictive fines upon the defendants. They are entitled to be judged by this Court according to the sober principles of law. A judicial disregard of what Congress has decreed may seem justified for the moment in view of the crisis which gave birth to this case. But such a disregard may ultimately have more disastrous and lasting effects upon the economy of the nation than any action of an aggressive labor leader in disobeying a void court order. The cause of orderly constitutional government is ill-served by misapplying the law as it is written, inadequate though it may be, to meet an emergency situation, especially where that misapplication permits punitive sanctions to be placed upon an individual or an organization.

SUPREME COURT OF THE UNITED STATES

Nos. 759, 760, 781, 782 AND 811.—OCTOBER TERM, 1946.

The United States of America, Petitioner,
759 v.
United Mine Workers of America, an Unincorporated Association.

The United States of America, Petitioner,
760 v.
John L. Lewis, Individually and as President of the United Mine Workers of America.

United Mine Workers of America, an Unincorporated Association, Petitioner,
781 v.
The United States of America.

John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner,
782 v.
The United States of America.

United Mine Workers of America, an Unincorporated Association, and John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioners,
811 v.
The United States of America.

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.

[March 6, 1947.]

MR. JUSTICE RUTLEDGE, dissenting.

This case became a *cause célèbre* the moment it began. No good purpose can be served by ignoring that obvious

fact. But it cannot affect our judgment save only perhaps to steel us, if that were necessary, to the essential and accustomed behavior of judges.[1] In all cases great or small this must be to render judgment evenly and dispassionately according to law, as each is given understanding to ascertain and apply it.

No man or group is above the law. Nor is any beyond its protection. *In re Yamashita*, 327 U. S. 1, dissenting opinion, 41. These truths apply equally to the Government. When its power is exerted against the citizen or another in the nation's courts, those tribunals stand not as partisans, but as independent and impartial arbiters to see that the balance between power and right is held even. In discharging that high function the courts themselves, like the parties, are subject to the law's majestic limitations. We are not free to decide this case, or any, otherwise than as in conscience we are enabled to see what the law commands.

I.

MR. JUSTICE FRANKFURTER has shown conclusively, I think, that the policy of the Norris-LaGuardia Act, 47 Stat. 70, applies to this situation. The legislative history he marshals so accurately and cogently compels the conclusion that the War Labor Disputes Act of 1943, 57 Stat. 163, not only confirms the applicability of the earlier statute, but itself excludes resort to injunctive relief for enforcement of its own provisions in situations of this sort.

[1] "Great cases like hard cases make bad law. For great cases are called great, not by reason of their real importance in shaping the law of the future, but because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment. These immediate interests exercise a kind of hydraulic pressure which makes what previously was clear seem doubtful, and before which even well-settled principles of law will bend." Holmes, J., dissenting, in *Northern Securities Co.* v. *United States*, 193 U. S. 197, 400–401.

That Act expressly provides the remedies for its enforcement. Beyond seizure of plants, mines and facilities for temporary [2] governmental operation, they are exclusively criminal in character.[3] They do not include injunctive or other equitable relief. Nor was the omission unintentional or due to oversight. It was specific and deliberate.

The Senate thoroughly considered and debated various proposals for authorizing equity to intervene in labor disputes, one by the Act's sponsor in that body. Positively, repeatedly and unwaveringly it rejected all of them. They were likewise rejected in conference, where the Senate's view prevailed over that of the House. The latter body had not been inattentive to the problem. It sought and failed to secure the very thing this Court now says, in

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[2] "*Provided*, That whenever any such plant, mine, or facility has been or is hereafter so taken by reason of a strike, lock-out, threatened strike, threatened lock-out, work stoppage, or other cause, such plant, mine, or facility *shall be returned to the owners thereof as soon as practicable, but in no event more than sixty days after the restoration of the productive efficiency thereof prevailing prior to the taking of possession thereof. . . .*" (Emphasis added.) War Labor Disputes Act § 3 [Act of June 25, 1943, 57 Stat. 163, 50 U. S. C. App. §§ 1501, 1503].

[3] "SEC. 6. (a) Whenever any plant, mine, or facility is in the possession of the United States, it shall be unlawful for any person (1) to coerce, instigate, induce, conspire with, or encourage any person to interfere, by lock-out, strike, slow-down, or other interruption, with the operation of such plant, mine, or facility, or (2) to aid any such lock-out, strike, slow-down, or other interruption interfering with the operation of such plant, mine, or facility by giving direction or guidance in the conduct of such interruption, or by providing funds for the conduct or direction thereof or for the payment of strike, unemployment, or other benefits to those participating therein. No individual shall be deemed to have violated the provisions of this section by reason only of his having ceased work or having refused to continue to work or to accept employment.

"(b) Any person who willfully violates any provision of this section shall be subject to a fine of not more than $5,000, or to imprisonment for not more than one year, or both." War Labor Disputes Act of 1943, § 6.

effect, was included.[4] That issue and that policy were indeed the main thrust and focus of the legislative struggle, and the outcome was not negative; it was positive and conclusive against using or giving the equitable remedies.

Surely we have not come so far toward complete inversion of legislative history as to write out of the law the views concerning a matter of such major policy held by the chamber which prevailed at the final stage of enactment and to write into the law diametrically opposing views of another chamber which yielded at that time. The case, as MR. JUSTICE FRANKFURTER demonstrates beyond any doubt, cannot be one where inattention, oversight or inaction may explain or give significance to what was done by the House of Representatives. That body was defeated, not simply silent, in the outcome. Willingly or otherwise, it acquiesced in the Senate's policy of refusing to authorize injunctive relief, and in doing so joined formally and effectively in the final act which made that policy law.

This means to me that Congress, in that action, did not simply confirm the Norris-LaGuardia Act's policy or leave it untouched with respect to situations within the War Labor Disputes Act's coverage. It means that Congress was not departing from or nullifying that policy. Rather by the later Act Congress adopted the same policy, the long prevailing national policy, for those situations.

The Senate, and at the end the Congress, were not declining expressly to authorize labor injunctions only to turn squarely about and nullify that refusal in the same

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[4] The issue is not avoided, nor is the effect of final legislative rejection nullified, by the easy device of resting the power said to exist upon common law rules of statutory construction which, if otherwise pertinent, were in the very teeth of Congress' positive refusal to confer the power after the fullest and most attentive consideration. That device only conceals the true issue. See also note 11.

breath, merely by virtue of the fact that the employees of seized plants necessarily were made subject temporarily to ultimate governmental operating direction and control.[5] We cannot attribute to Congress an intent so duplicitous. Thus to construe the Act not only would bring the provision for temporary control into collision with its remedial provisions as the history shows they were intended to apply. It would be to find Congress guilty of using a devious method for achieving indirectly exactly the thing it expressly declined to do. The words "governmental employee," "employee . . . for the purposes of this case" or "relationship . . . of employer and employee," none of which appear in the statute, cannot be given effect consistently with our function to write into the Act, by judicial interpolation, remedial provisions which Congress flatly and finally declined to incorporate.

Whether Congress acted wisely in this refusal is not our concern. But it is not irrelevant to the Act's meaning, purpose and effect that there were good reasons, indeed strong ones, for Congress to continue to follow the Norris-LaGuardia Act's policy rather than break away from it at that crucial time. Under the statute practically every

[5] Seizure without such ultimate control, of course, would have been only one-sided, halfway seizure, operative only against management and owners. But seizure with such control did not require or mean that the control was to be exercised by labor injunctions. There was, and is, no inconsistency whatever between conferring the one power and denying the other. For this is exactly what Congress has done with reference to all plants not subject to the seizure power. Besides imputing to Congress the purpose to do with one hand what the other denied was being done, the identification of these two very distinct things serves only to confuse and make obscure the real question. This is simply whether Congress intended to abrogate for seized plants or to continue in force the established policy against labor injunctions as a method of exercising the powers of ultimate control conferred upon the Government.

industrial or mining facility, together with many of transportation,[6] was subject to seizure and governmental operation. Introducing the labor injunction into the Act's structure therefore would have been tantamount to repeal of the Norris-LaGuardia Act for the duration of the emergency powers, since seizure was authorized whenever the President should find, after investigation, and proclaim that there was an interruption of operations "as a result of a strike or other labor disturbance." § 3. Ready means thus would have been made available, if such had been the statute's purpose, for suspending the Norris-LaGuardia policy and provisions in any case where they might become operative.

Congress was thoroughly familiar with the history and effects of injunctions in labor disputes, with the long settled national policy against them, and with the universal abhorrence in the ranks of labor, however otherwise divided, toward them. In view of all these things Congress well may have felt and I think did feel, as my brother's recital of the history shows, that it was both unnecessary and unwise, perhaps would even be harmful to furtherance of the war effort, in substance to repeal the Norris-LaGuardia policy for the duration of the war emergency and thus to resurrect, in that critical situation, the long disused instruments that Act had outlawed.

It is important in this connection that 1943, rather than 1945 or 1946, was the year in which the War Labor Disputes Act was adopted. We were then not yet over the hump of the war. But neither had we reached the peak of labor disturbances which came only after active hostilities ceased, more than two years later.[7] The great body of

[6] Section 2 (c) excludes carriers as defined in Title I of the Railway Labor Act, 45 U. S. C. § 151, or carriers by air as subject to Title II of the Railway Labor Act, 45 U. S. C. § 181.

[7] The available statistics speak in terms of "strikes" for 1943 and "work stoppages arising from labor-management disputes" for 1945

American workers was bending to the patriotic duty of peak production for war purposes. By comparison with what occurred after the fighting ended, the volume of man-days lost was about one-tenth of the later postwar peak loss.[8] Moreover, at that time the War Labor Board, specially constituted to deal with such disturbances, was functioning with a high degree of efficiency in their settlement.[9] There was nevertheless strong feeling that labor disputes should not be allowed to interrupt war production, regardless of cause or blame. And from this arose the demand for more effective powers to deal with them.

It was in this setting and to meet the problems it had thrown up, not the later one out of which this controversy arose, that the War Labor Disputes Act was adopted. The Act was exactly what its title indicated, a measure

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and 1946. For 1943, 13,500,529 man-days were lost through strikes. For 1945, 38,025,000 man-days were lost through work stoppages, and 113,000,000 man-days were so lost in 1946. In 1943 there were 3,752 strikes. In 1945 there were 4,750 work stoppages and in 1946, 4,700. See Strikes in 1943, Bull. No. 782, U. S. Bureau of Labor Statistics; Work Stoppages Caused by Labor-Management Disputes in 1945, Bull. No. 878, U. S. Bureau of Labor Statistics; Review of Labor-Management Disputes, 1946, U. S. Bureau of Labor Statistics Release, January 11, 1947.

[8] See note 7.

[9] See Hearings before the Committee on Military Affairs of the House of Representatives on S. 796, 78th Cong., 1st Sess., 25-26. "The War Labor Board was set up to deal with industrial relations. While this Board may not have a perfect record, it has a very good record to its credit, particularly when we consider the great problems it must deal with." 89 Cong. Rec. 5339.

The number of War Labor Board cases resulting in plant seizures by the United States, so far as statistics are available, is as follows: Four cases from June 25, 1943, the date of the passage of the War Labor Disputes Act, to December 31, 1943; seventeen cases from January 1, 1944, to December 31, 1944; fifteen cases from January 1, 1945, to August 1945. We are informed that in no instance of seizure, except the one under consideration, was a labor injunction issued at the behest of the Government.

for dealing with labor disputes in the emergency of the war. Congress, it is true, anticipated that for a limited period after the end of fighting the same emergency powers would be needed.[10] But this does not mean that those powers were shaped, or are now to be measured in scope, so as to meet all of the situations which since have arisen in the vastly changed circumstances; or that Congress intended them to be met by repealing the settled policy against injunctions in labor disputes in the sweeping manner now accomplished by the Court's decision. On the contrary, in June of 1943, Congress dealt with the situation then before it and refused to authorize such relief because that situation did not demand this.

In view of all these considerations, I cannot believe that Congress, in effect and by indirection, was exerting its war power to the greatest possible extent or was thereby either repealing or suspending the nation's settled policy against injunctions in labor disputes. Rather, the conclusion is inescapable that Congress was relying exclusively upon the added powers of enforcement expressly conferred by the Act, namely, the power of seizure and the force of the criminal sanction, to accomplish the needed results.[11]

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[10] Section 3 provides: "*Provided further*, That possession of any plant, mine, or facility shall not be taken under authority of this section after the termination of hostilities in the present war, as proclaimed by the President, or after the termination of the War Labor Disputes Act; and the authority to operate any such plant, mine, or facility under the provisions of this section shall terminate at the end of six months after the termination of such hostilities as so proclaimed."

It may be noted that on December 31, 1946, the President by proclamation announced the end of hostilities. 12 Fed. Reg. 1. The emergency powers conferred by the Act terminate six months thereafter.

[11] If general common law rules of statutory construction were appropriate for criteria to determine such issues as this case presents for the meaning of the Act, certainly that rule would be equally applicable

These were in themselves powerful sanctions. They carried with them the added and very great sanction of aroused public opinion [12] which would follow not simply upon interruption of essential war production but more particularly upon such an event in any facility taken over and operated under governmental auspices. Congress, after mature deliberation, concluded that these sanctions were adequate, and for that reason made them exclusive. In no other way can its repeated and final refusals to confer the strenuously sought equitable remedies be made consistent with the legislative and general history or be given meaning and effect. To construe the Act as permitting what Congress thus so explicitly refused to allow is to go beyond our function and intrude upon that of Congress. This we have no right or power to do. If the situation presented by the facts of this case is one which goes beyond the powers Congress has conferred for dealing with it, that is a matter for Congress' consideration, not for correction by this Court.

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with any other which dictates that when a statute provides specific remedies adequate for enforcing its provisions those remedies alone are deemed to be made available. But in view of the legislative and other history, this case is not one to be turned, in my opinion, by such vague, conveniently selective and often, as here, contradictory canons of construction.

[12] It is this sanction upon which Congress has chosen to rely ultimately, for instance, in the Railway Labor Acts, though provision is made for preliminary resort to processes of conciliation, mediation and voluntary arbitration before the use of ultimate economic force by strike or lockout, when the sanction of public opinion comes chiefly into play. See *Brotherhood of Railway Trainmen* v. *Toledo, Peoria & W. R. R.*, 321 U. S. 50; *General Committee* v. *Missouri-Kansas-Texas R. R.*, 320 U. S. 323. On the whole that policy and the sanctions provided have worked successfully to eliminate stoppages in railway transportation. And as of June, 1943, it may be fairly assumed that Congress, in declining to authorize the issuance of labor injunctions, was conscious of and chose to rely upon this accepted sanction together with the specific ones then conferred by the War Labor Disputes Act.

Accordingly, upon the specific terms of the War Labor Disputes Act itself, upon the legislative history as summarized by MR. JUSTICE FRANKFURTER, and upon the historical setting in which the statute was enacted as defining the problems it was designed to meet, together with shaping the nature and scope of the measures required to meet them, I conclude that that Act in no way impaired but on the contrary adopted and incorporated the policy of the Norris-LaGuardia Act concerning the issuance of injunctions in labor disputes.

II.

This conclusion substantially compels the further one that *United States* v. *Shipp*, 203 U. S. 563, has no valid application to the situation presented by this case.

This Court has not yet expressly denied, rather it has repeatedly confirmed Congress' power to control the jurisdiction of the inferior federal courts and its own appellate jurisdiction. Const., Art. III, § 2. *Ex parte McCardle*, 7 Wall. 506; *Lockerty* v. *Phillips*, 319 U. S. 182, 187, and authorities cited. See Warren, New Light on the History of the Federal Judiciary Act of 1789 (1923), 37 Harv. L. Rev. 49, 67 ff. That power includes the power to deny jurisdiction as well as to confer it. *Ibid.* And where Congress has acted expressly to exclude particular subject matter from the jurisdiction of any court, except this Court's original jurisdiction, I know of no decision here which holds the exclusion invalid, or that a refusal to obey orders or judgments contravening Congress' mandate is criminal or affords cause for punishment as for contempt.

If that were the law, the result could only be to nullify the congressional power over federal jurisdiction for a great volume of cases. And if it should become the law, for every case raising a question not frivolous concerning the court's jurisdiction to enter an order or judgment, that punishment for contempt may be imposed irrevocably

simply upon a showing of violation, the consequences would be equally or more serious. The force of such a rule, making the party act on pain of certain punishment regardless of the validity of the order violated or the court's jurisdiction to enter it as determined finally upon review, would be not only to compel submission.[13] It would be also in practical effect for many cases to terminate the litigation, foreclosing the substantive rights involved without any possibility for their effective appellate review and determination.

This would be true, for instance, wherever the substantive rights asserted or the opportunity for exercising them would vanish with obedience to the challenged order. Cf. *Ex parte Fisk*, 113 U. S. 713. The First Amendment liberties especially would be vulnerable to nullification by such control. Thus, the constitutional rights of free speech and free assembly could be brought to naught and censorship established widely over those areas merely by applying such a rule to every case presenting a substantial question concerning the exercise of those rights. This Court has refused to countenance a view so destructive of the most fundamental liberties. *Thomas* v. *Collins*, 323 U. S. 516. These and other constitutional rights would be nullified by the force of invalid orders issued in flat violation of the constitutional provisions securing them, and void for that reason. The same thing would be true also in other cases involving doubt, where statutory or other rights asserted or the benefit of asserting them would vanish, for any practical purpose, with obedience.

Indeed it was because these were so often the effects, not simply of final orders entered after determination upon the merits, but of interlocutory injunctions and *ex parte* restraining orders, that the Norris-LaGuardia Act became

[13] More especially when account is taken of the vast liberty, called "discretion," which courts are said to have, and in this case are held to have, in fixing punishment for contempts. But see Part IV.

law and, as I think, the War Labor Disputes Act continued in force its policy. For in labor disputes the effect of such orders, it was pointed out officially and otherwise,[14] is generally not merely failure to maintain the status quo pending final decision on the merits. It is also most often to break the strike, without regard to its legality or any conclusive determination on that account, and thus to render moot and abortive the substantive controversy.[15]

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[14] "The restraining order and the preliminary injunction invoked in labor disputes reveal the most crucial points of legal maladjustment. . Temporary injunction relief without notice, or, if upon notice, relying upon dubious affidavits, serves the important function of staying defendant's conduct regardless of the ultimate justification of such restraint. The preliminary proceedings, in other words, make the issue of final relief a practical nullity. . . . the suspension of strike activities, even temporarily, may defeat the strike for practical purposes and foredoom its resumption, even if the injunction is later lifted." Frankfurter and Greene, The Labor Injunction (1930) 200–201.

"Time is the essence of the strike. Keeping the injunction alive by dilatory tactics blunts the edge of the only effective instrument that labor possesses, namely, the strike.

"The bill now before us makes it well-nigh impossible to secure a restraining order except under the well-defined and limited conditions set out in sections 7 and 8." 75 Cong. Rec. 5489. See also *People ex rel. Sandnes* v. *Sheriff of King's County*, 299 N. Y. Supp. 9, 16.

[15] See note 14. *Ex parte Fisk*, 113 U. S. 713, presents another clear illustration of the type of right which would be wholly nullified by general application of the alleged broad conception of the *Shipp* doctrine. There the Circuit Court, in contravention of explicit acts of Congress as this Court found, had ordered Fisk to submit to oral examination before trial in a removed civil cause, the examination to be before a justice of the court and according to procedure prescribed by state law for the state court from which the case was removed. Fisk refused to obey the order, standing upon the Circuit Court's lack of jurisdiction to enter it, was held in contempt for this, and fined $500 and ordered imprisoned until the fine was paid. He brought habeas corpus to secure release from the imprisonment thus imposed.

This Court held void both the order for examination and the order of commitment, as beyond the Circuit Court's jurisdiction, and

It is not every case therefore where substantial doubt appears, concerning either the issues in the main cause or the court's jurisdiction to issue interlocutory or other orders, in which violation will bring the so-called *Shipp* doctrine into play. If that were true then indeed would a way have been found to nullify the constitutional limitations placed upon the powers of courts, including the control of Congress over their jurisdiction. Then also the liberties of our people would be placed largely at the mercy of invalid orders issued without power given by the Constitution and in contravention of power constitutionally withheld by Congress. *Ex parte Fisk*, 113 U. S. 713; *Thomas* v. *Collins*, *supra*.

Indeed the *Shipp* doctrine thus broadly conceived would go far toward nullifying the historic jurisdiction of this Court and others in habeas corpus, for it would do this in the many situations where the cause of commitment is violation of a doubtfully valid court order and the ground asserted for release is the court's lack of jurisdiction to enter it. Thus, in this case, if the party Lewis had been imprisoned rather than fined, the broad application now made of the *Shipp* decision would dictate that he could not be released by habeas corpus, even though it were now held here that the restraining orders were beyond the District Court's jurisdiction to issue.[18] If those

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granted petitioner's release from custody. The Court said: "Not only is no such power [of examination] conferred, but it is prohibited by the plain language and the equally plain purpose of the acts of Congress. . . . The Circuit Court was, therefore, without authority to make the orders for the examination of petitioner in this case, and equally without authority to enforce these orders by process for contempt." Pp. 724, 726. Had Fisk submitted, as *Shipp* is now said to require should be done, not only would the specific commands of Congress have been nullified. His right, secured by those commands, could never have been vindicated. The statutes would have been made dead letters.

[18] Indeed at least one state court has held this result to follow and in his dissenting opinion in *In re Sawyer*, 124 U. S. 200, 224, Harlan, J.,

orders were valid, for purposes of finally and conclusively imposing punishment in contempt, regardless of the court's want of power to issue them, this would be so whether the punishment were fine or imprisonment. And it clearly would follow in cases of criminal contempt,[17] perhaps in others, that the court's lack of jurisdiction could furnish no basis for granting relief, unless the penalty were found to be cruel and unusual or, in the case of a fine, excessive.[18]

I cannot believe that the historic powers of our courts in habeas corpus or the rights of citizens, confirmed as these have been for so long by an unbroken line of decisions,[19] have been or can be overthrown and subverted,

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stated this to be his view of the law (see however note 19), as apparently also it was of Waite, C. J. P. 223. See *Reid* v. *Independent Union*, 200 Minn. 599 (certiorari), but see the dissenting opinion, 200 Minn. at 612; Collateral Attack Upon Labor Injunctions Issued in Disregard of Anti-Injunction Statutes (1938) 47 Yale L. J. 1136; *People ex rel. Sandnes* v. *Sheriff of Kings County*, 299 N. Y. Supp. 9.

[17] See Part IV.

[18] *Ibid.*

[19] *Ex parte Rowland*, 104 U. S. 604; *Ex parte Fisk*, 113 U. S. 713; *In re Ayers*, 123 U. S. 443, 507; *In re Sawyer*, 124 U. S. 200; *In re Burrus*, 136 U. S. 586; *Thomas* v. *Collins*, 323 U. S. 516 (arising under state law). And see *Ex parte Young*, 209 U. S. 123, 143; cf. pp. 135, 139, collecting the authorities.

In the *Sawyer* case, *supra*, the Court said: "The case cannot be distinguished in principle from that of a judgment of the Common Bench in England in a criminal prosecution, which was *coram non judice*; or the case of a sentence passed by the Circuit Court of the United States upon a charge of an infamous crime, without a presentment, or indictment by a grand jury. *Case of the Marshalsea*, 10 Rep. 68, 76; *Ex parte Wilson*, 114 U. S. 417; *Ex parte Bain*, 121 U. S. 1." 124 U. S. at 221. Hardly can it be said that the *Sawyer* decision went on the ground that the question of jurisdiction to enter the order was not substantial, in view of the length and detail of the Court's opinion, which gave no hint of such a suggestion, and in view also of the fact that Field, J., concurred in a separate opinion and Waite, C. J., and Harlan, J., wrote separate dissents taking the posi-

merely by the fact that the question of the court's power to issue the order violated may be doubtful and not merely frivolous. Nor do I think the *Shipp* decision accomplished or purported to accomplish so much.

Certainly if its purpose had been to overrule the decisions so thoroughly established, and to trench so heavily upon the historic liberties they and the Constitution itself secure, some note would have been taken of that fact. So great a revolution hardly could have been wrought unanimously or without attentive recognition of what was being done. There was indeed reference in the opinion to the previous decisions. The Court stated: "It has been held, it is true, that orders made by a court having no jurisdiction to make them may be disregarded without liability to process for contempt," citing the *Sawyer, Fisk,* and *Rowland* cases.[20] 203 U. S. at 573. But there was not the slightest suggestion, by this reference or otherwise, that the Court had any purpose whatever to impair the force of those decisions, much less to overrule them. Nor in fact was this its intent. It mentioned them only to put them aside as inapplicable to the situation before it.

Indeed, in *Gompers* v. *Buck's Stove & R. Co.*, 221 U. S. 418, decided five years after the *Shipp* decision, a unanimous Court joined in citing *Ex parte Rowland*, 104 U. S. 612, in context consistent only with the view that its doctrine, and therefore that of others like it decided prior to the *Shipp* case, remained fully effective. P. 436. There was no intimation, as otherwise necessarily would have been given, that the *Shipp* decision had reversed or modified the *Rowland* case, or any like it, in any way. And in *Ex parte Young*, 209 U. S. 123, not only the Court, p. 143, but the opposing distinguished counsel, pp. 135, 139, all

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tion which the Court now accepts for this case. See note 16 *supra*. Harlan, J., however, receded from his view in *Ex parte Young, supra*, where he dissented on other grounds. 209 U. S. at 169, 174.

[20] See note 19.

concurred in reaffirming the *Rowland* ruling. Harlan, J., dissenting, retracted his former contrary view (see note 19 *supra*) in this respect. Pp. 169, 174. And Holmes, J., who spoke for the Court in the *Shipp* case, joined with the Court's reaffirmation of the *Rowland* doctrine in both the *Gompers* and *Young* opinions.

The Court in *Shipp* was dealing with a situation quite different from the ones presented in the previous decisions and in this case. In none of them was the action which violated the court's order such as would have defeated its jurisdiction not only to enter the order but also to proceed with the cause before it in any manner, except to deal with the matter of contempt.[21] In them the Court was not

[21] In *Ex parte Rowland*, 104 U. S. 604, the county commissioners' disobedience of an order commanding them to collect a certain tax did not moot the controversy, which was whether the judgment debtor, by proceeding against the proper county official, the tax collector, could satisfy its judgment by forcing collection of the tax; and, the order being held void, their action in disobeying it was held not to be contempt.

The disobedience of the petitioner in *Ex parte Fisk*, 113 U. S. 713, deprived the plaintiff in the suit against him of the use of his testimony but did not defeat this suit or the ability of the courts to decide whether he could be forced to submit to examination. See note 19 *supra*.

In *Ex parte Sawyer*, 124 U. S. 200, the refusal of the city officials to obey an order enjoining them from removing a police judge did not vitiate judicial power to decide the issue whether the city officials possessed the removal power. The controversy remained and, as this Court pointed out, it was determinable by mandamus or *quo warranto*. This Court held the order invalid and the officials not guilty of contempt.

In *Ex parte Burrus*, 136 U. S. 586, the refusal of the grandparents to give up the child upon order issued by a federal court did not destroy the power of the court, which had already been exercised, though improperly the Court held, to determine whether the child was properly in their custody or in the custody of the father. As the contempt order was held void, habeas corpus was granted.

Moreover in none of these cases did the disobedience destroy the jurisdiction of the trial and appellate courts to determine jurisdiction.

faced with the necessity for taking action to vindicate its power to hear and determine the main controversy, as well as the incidental one arising upon the validity of the interlocutory or other order. Nor is it here.

But exactly such a situation was presented in the *Shipp* case. The conduct there held to be contempt not only was in itself criminal and in violation, as it turned out, of this Court's lawful order for taking the appeal in Johnson's case. It ousted this Court altogether of jurisdiction to take any action in that cause. It rendered the cause moot, thereby putting an end to any proceedings concerning it here or elsewhere. Shipp's alleged conduct constituted therefore the most serious possible interference with the due and orderly course of administering justice. It utterly destroyed the power of all courts to act. Further, the order violated was not made directly in contravention of an act of Congress, as was true in the *Fisk* case and, as I think, in this one. It rather was made in complete conformity with the statutes conferring authority on this Court to take jurisdiction of and hear such causes. Nothing in it violated either a congressional mandate and policy or the rights of any party.

Moreover the decision was not effective, as its doctrine is now said to be, to put Shipp to any choice of obedience on pain of certain punishment regardless of the violated order's validity or invalidity as ultimately determined on review. No such situation was presented on the facts, and no such ruling could properly have been made. Shipp had not been convicted. The case came here upon a challenge *in limine*, not after the event, made upon the pleadings in the contempt proceedings to their validity. The basis asserted was the invalidity of the order allowing the appeal in Johnson's case, for alleged want of jurisdiction of this Court to enter it.[22] That contention was rejected

[22] See note 24. The order allowing appeal directed "that all proceedings be stayed and the custody of the said appellant be retained during this appeal."

and the order was held valid. It was in this connection only that the Court stated it had "jurisdiction to determine its jurisdiction" in doubtful cases. That statement was not a ruling that, regardless of a violated order's ultimate validity as determined on review,[23] punishment in contempt for violating it could be irrevocably imposed. It was merely a statement of the reason for the order's validity.[24] The holding was that this Court had jurisdiction, as of course it does in doubtful as well as clear cases, to de-

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[23] See note 24. The Court was reviewing its own order, the one that was violated.

[24] The statement was made in response to counsel's contention that the order allowing the appeal was void and therefore would not support a conviction for contempt. The Court rejected the premise, not the conclusion.

The basis of counsel's contention was that the Circuit Court lacked jurisdiction and therefore that this Court also lacked jurisdiction. His brief stated: "The only question, therefore, is whether Johnson's proceeding in habeas corpus in the Circuit Court did or did not in fact constitute a 'case that involves the construction or application of the Constitution of the United States.' If it did, this Court had appellate jurisdiction of it and should proceed to inquire whether its order has been disobeyed. If it did not, this Court had no jurisdiction of it, *and should now so hold for the purposes of this proceeding. . . .*" (Emphasis added.) And elsewhere the brief stated: "We assume that it will hardly be contended that the mere allowance of an appeal is sufficient to give the court jurisdiction of a case which from its nature is not appealable. Such action is *pro forma* only, and as it is necessarily had in every such case the jurisdiction of the court would always be established by an *ex parte* order."

In answer to these arguments the Government's brief said: "Certainly no one would challenge the jurisdiction of this Court if the Circuit Court had jurisdiction, and accordingly the defendants here deny the jurisdiction of this court simply as a corollary to their contention that the Circuit Court did not possess jurisdiction. But the jurisdiction of this court is not dependent upon contentions, and it has jurisdiction to take the case and retain it for final determination whether it turns out that the Circuit Court has jurisdiction or not."

termine whether the federal courts—the Circuit Court and accordingly this Court also—had power to pass upon Johnson's petition for habeas corpus.[25]

From that ruling and from it alone the consequence followed that Shipp could be held in contempt on proof, still to be made, that he had done acts in violation of the order as thus conclusively determined to be valid by the court of last resort. This was a far cry from holding that punishment in contempt can be laid irrevocably, regardless of the outcome on review concerning the order's validity. The Court by its ruling was not making void orders valid for purposes of punishment by way of contempt. Only if the Court has held its own order which Shipp violated invalid would such a question have been presented.

The *Shipp* decision therefore was in fact simply an application of the long established rule that punishment in contempt may be inflicted on proof of violation of a valid order of court as determined finally on review. It did not overrule, nor was it in any way inconsistent with the long prior course of decisions holding that when an order is void for want of jurisdiction it may be disobeyed with impunity pending but depending upon determination of its invalidity by appeal, habeas corpus, or other mode of review. *Gompers* v. *Buck's Stove & R. Co., supra; Ex parte Young, supra.* It was an application, in the circumstances presented, of the settled rule that one who takes it upon himself to violate an order of court he thinks void thereby takes the risk that on review he will be sustained

[25] See note 24. No argument was made that even if the Circuit Court had jurisdiction this Court did not. Thus, the statement in the opinion "But even if the Circuit Court had no jurisdiction to entertain Johnson's petition, and if this Court had no jurisdiction of the appeal, this Court, and this Court alone, could decide that such was the law," 203 U. S. at 573, means "But even if the Circuit Court had no jurisdiction to entertain Johnson's petition and if *for that reason* this Court had no jurisdiction of the appeal," etc.

and, in the contrary event and then only, will he be subject irrevocably to punishment for contempt. *Ibid.*

In my judgment this is the rule properly applicable in this case, the only one consistent with the settled and unvaried course of decision, with the commands of the War Labor Disputes Act, of the Norris-LaGuardia Act, and with § 268 of the Judicial Code, 36 Stat. 1163, 28 U. S. C. § 385.

Apart from immediate and other interferences with judicial proceedings not presented here, that section authorizes punishment for contempt only for disobedience of a "*lawful* writ, process, order, rule, decree, or command of the said courts." (Emphasis added.) The section by its terms, apart from the exceptions not here applicable, limits power to punish for contempt to violations of lawful orders, thereby necessarily excluding others. Nor did it purport to make lawful for that purpose interlocutory orders issued without jurisdiction as determined finally upon review.[26]

This case, unlike the *Shipp* case, in no way involves interference with any of the legal proceedings or the due course of administering justice in any sense contemplated by § 268 or by the *Shipp* decision. No court, trial or appellate, was deprived by the defendant's conduct of jurisdiction or power to take any action in any of the proceed-

[26] It has been held that habeas corpus will not lie where the disobedience was to a lawful, but erroneous, order of a court. *Ex parte Kearney*, 7 Wheat. 38. See also *Locke* v. *United States*, 75 F. 2d 157, 159: "Error must be corrected by appeal, and cannot be tested by disobedience. . . . Willful disobedience of an injunction, however erroneous, issued by a court having jurisdiction while such injunction is in force unreversed constitutes contempt of court." And it has been said that if an injunction is reversed on appeal on grounds other than "jurisdiction," the violator may nevertheless be punished for criminal, though not for civil, contempt. *Worden* v. *Searls*, 121 U. S. 14; *Salvage Process Corp.* v. *Acme Tank Clean Process Corp.*, 86 F. 2d 727.

ings, collateral or in the main suit, which existed at the beginning of the controversy. The order therefore falls exclusively within the concluding clause of § 268 and the power to punish for contempt on account of its violation depends, by the command of that clause, upon the order's lawful character.

Since in my opinion the order was jurisdictionally invalid when issued, by virtue of the War Labor Disputes Act and its adoption of the Norris-LaGuardia Act's policy, it follows that the violation gave no sufficient cause for sustaining the conviction for contempt. *Ex parte Fisk, supra.* Lewis and the United Mine Workers necessarily took the risk that the order would be found valid on review and, in that event, that punishment for contempt would apply. They did not take the risk that it would apply in any event, even if the order should be found void as beyond the jurisdiction of the Court to enter. See the dissenting opinion in *Carter* v. *United States*, 135 F. 2d 858, 862. The Shipp case furnishes no precedent for such a view nor do I know of any other in this Court which does.[27]

On the contrary that view has been long rejected, and I do not think we should disturb or depart from that settled course of decision now. "If the command of the writ [of mandamus] was in excess of jurisdiction, so necessarily were the proceedings for contempt in not obeying." *Ex parte Rowland*, 104 U. S. 604, 617–618. The power of the federal courts to issue stay orders to maintain the status quo pending appeal, like other matters affecting

[27] To be distinguished are cases in which Congress provides an adequate but limited opportunity for challenging the validity of administrative or other orders but forecloses such opportunity when it is not taken as prescribed. See *Yakus* v. *United States*, 321 U. S. 414, cf. dissenting opinion, p. 460. See also *United States* v. *Ruzicka*, 329 U. S. —; *Falbo* v. *United States*, 320 U. S. 549; *Estep* v. *United States*, 327 U. S. 114; *Gibson* v. *United States*, 329 U. S. —. That is very different from affording no opportunity whatever except by obedience.

their jurisdiction except in the case of this Court's original jurisdiction, is subject to Congress' control. That control has been exercised, in my view, to exclude such jurisdiction in cases of this character. And, this being true, I do not think either we or any other court subject to that mandate has power to punish as for contempt the violation of such an order issued in contravention of Congress' command. *Ex parte Fisk, supra.*

III.

The issues concerning the manner in which the contempt proceeding was conducted are in themselves of great moment, apart from the foregoing conclusions which I think are dispositive of the controversy. And the Court's rulings upon them are of such a character that I cannot accede by silence.

At times in our system the way in which courts perform their function becomes as important as what they do in the result. In some respects matters of procedure constitute the very essence of ordered liberty under the Constitution. For this reason, especially in the Bill of Rights, specific guaranties have been put around the manner in which various legal proceedings shall be conducted. They differentiate sharply between the procedures to be followed in criminal proceedings and in civil ones. These differences mark one of the great constitutional divides.[28] They separate the zone of punishment for crime, with all its odious consequences, from that of giving civil relief, where no such consequences attend, not partially but completely.

In any other context than one of contempt, the idea that a criminal prosecution and a civil suit for damages or equitable relief could be hashed together in a single criminal-civil hodgepodge would be shocking to every

[28] *Yakus* v. *United States*, 321 U. S. 414, dissenting opinion, at 479 ff.

American lawyer and to most citizens. True, the same act may give rise to all these varied legal consequences. But we have never adopted, rather our Constitution has totally rejected the continental system of compounding criminal proceedings with civil adjudications.[29] Our tradition is exactly the contrary and few would maintain that this has had no part in bringing about the difference existing today for individual freedom here and in Europe.

I do not think the Constitution contemplated that there should be in any case an admixture of civil and criminal proceedings in one. Such an idea is altogether foreign to its spirit. There can be no question that contempt power was conferred adequate to sustain the judicial function, in both civil and criminal forms. But it does not follow that the Constitution permits lumping the two together or discarding for the criminal one all of the procedural safeguards so carefully provided for every other such proceeding.

The founders did not command the impossible. They could not have conceived that procedures so irreconcilably inconsistent in many ways[30] could be applied simultane-

[29] Thus, in some civil law countries damages, as well as other penalties, are assessed in a criminal proceeding. See Schwenk, Criminal Codification and General Principles of Criminal Law in Argentina, Mexico, Chile and the United States: A Comparative Study (1942) 4 La. L. Rev. 351, 373–374; Goirand and Thompson, The French Judicial System and Procedure in French Courts (1919) 14. See also Esmein, A History of Continental Criminal Procedure (1913) 429–430.

[30] Upon the authorities, the following procedural provisions of the Bill of Rights, at least, would seem to apply to criminal contempt: The provision against double jeopardy, see *In re Bradley*, 318 U. S. 50; the provision against self-incrimination, *Gompers* v. *Buck's Stove & R. Co.*, 221 U. S. 418, 444; the provision for due process insofar as it necessitates "suitable notice and adequate opportunity to appear and to be heard," *Blackmer* v. *United States*, 284 U. S. 421, 440; and, although the Sixth Amendment protections have been said not to

ously. Nor was their purpose to create any part of judicial power, even in contempt, wholly at large, free from any constitutional limitation or to pick and choose between the conflicting civil and criminal procedures and remedies at will. Much less was it to allow mixing civil remedies and criminal punishments in one lumped form of relief, indistinguishably compounding them and thus putting both in unlimited judicial discretion, with no possibility of applying any standard of measurement on review.[31]

If this can be done in any case, it can be done in others. And that being true, if it can be done at all, not simply a loophole but a very large breach has been left in the wall of procedural protections thrown around the citizen's punishment for crime. For it is to be recalled that under the Court's ruling here upon the *Shipp* doctrine not merely

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apply as such to criminal contempts, *Myers* v. *United States*, 264 U. S. 95, 104–105; *Blackmer* v. *United States*, 284 U. S. at 440, but see text *infra*, doubtless at least the provisions for "a speedy and public trial," for "compulsory process" and for the assistance of counsel, see *Cooke* v. *United States*, 267 U. S. 517, 537, are implied in the due process provision of the Fifth Amendment. And it has been said that the protection against cruel and unusual punishments in the Eighth Amendment applies to criminal contempt, *United States ex rel. Brown* v. *Lederer*, 140 F. 2d 136, 139.

There are also protections not expressly included in the Bill of Rights which apply in criminal contempt, *e. g.*, that the defendant is presumed to be innocent and must be proved guilty beyond a reasonable doubt. *Gompers* v. *Buck's Stove & R. Co.*, 221 U. S. 418, 444. And see *Ex parte Hudgings*, 249 U. S. 378, 383: "Existing within the limits of and sanctioned by the Constitution, the power to punish for contempt committed in the presence of the court is not controlled as to modes of accusation and methods of trial generally safeguarding the rights of the citizen. This, however, expresses no purpose to exempt judicial authority from constitutional limitations, since its great and only purpose is to secure judicial authority from obstruction in the performance of its duties to the end that means appropriate for the preservation and enforcement of the Constitution may be secured."

[31] See Part IV.

the violation of valid judicial orders, but also the disobedience of invalid orders issued in excess of any court's jurisdiction becomes a crime and punishable as such by summary proceedings in criminal contempt, although the substantive rights involved in the litigation are wholly civil ones. The vastly expanded area of criminal conduct under this conception would afford equally wide room for dispensing with the criminal procedural protections under the unrestricted scope, otherwise than by "judicial discretion," which the present ruling concerning criminal or criminal-civil proceedings in contempt affords.

In my opinion, our system does not comprehend a power so unconfined anywhere within its broad borders, and it is time the large confusion about this were swept away.[32] It is not necessary in this case to ask or decide whether all of

[32] The confusion, at least as to the matter of indictments and jury trial, cf. note 33, has its origin in historical error exposed in Fox, The History of Contempt of Court (1927), and Frankfurter and Landis, Power of Congress over Procedure in 'Inferior' Federal Courts—A Study in Separation of Powers (1924) 37 Harv. L. Rev. 1010. "Down to the early part of the eighteenth century cases of contempt even in and about the common-law courts when not committed by persons officially connected with the court were dealt with by the ordinary couse of law, *i. e.* tried by jury, except when the offender confessed or when the offense was committed 'in the actual view of the court'." Frankfurter and Landis, *supra*, at 1042. Until 1720 "there is no instance in the common-law precedents of punishment otherwise than after trial in the ordinary course and not by summary process." *Id.*, 1046.

However, Wilmot, J., in 1765, influenced by Star Chamber procedure and precedents, although the Star Chamber had been abolished in 1641, stated that it was "immemorial usage" to punish all contempts summarily. Alnon's Case, Wilmot's Notes, p. 243. And although this opinion was not published until thirty-seven years later, "there is ample evidence that as a result of private communication between Wilmot and Blackstone, Wilmot's views of 1765 found their way 'both in phrase and matter' into the four volumes of the famous Commentaries published in 1769. . . ." Frankfurter and Landis,

the Constitution's criminal procedural protections thrown about all other criminal prosecutions, without suggestion of explicit exception, apply to criminal contempt proceedings. It is enough that we are sure some of them apply, as this Court has ruled repeatedly.[33] It does not matter that some of those which incontestably are applicable may not have been put in issue or preserved for review in this case.[34] The question cuts more deeply than the application of any specific guaranty. It affects the right to insist upon or have the benefit of any.

This case is characteristic of the long existing confusion concerning contempts and the manner of their trial,

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supra, at 1046, n, 128. Wilmot's error "has bedevilled the law of contempt both in England and in this country ever since." *Id.*, 1047.

This history furnishes a slender thread indeed for thinking that the Constitution makers had no purpose to apply the usual procedural protections to criminal contempts. ". . . it is very doubtful whether at the date of the Constitution that doctrine [of *Almon's Case*, *supra*] did form part of the common law adopted by the United States. Mr. Justice Wilmot's undelivered judgement lay concealed until the year 1802, and, so far as is known, was not cited in an English Court until the hearing of *Burdett* v. *Abbott* in 1811. It was first cited with approval from the Bench in 1821, and was not therefore adopted as the common law of England until after the establishment of the American Constitution." Fox, *supra*, at 207.

[33] See note 30. It has been ruled consistently, however, that the rights to have the proceeding begun by indictment, Amend. V, and tried by jury, Amend. VI, do not apply. *E. g.*, *Eilenberger* v. *District Court*, 134 U. S. 31; *Gompers* v. *United States*, 233 U. S. 604; *In re Debs*, 158 U. S. 564.

[34] Defendants have not argued either in the District Court or in this Court that they are constitutionally entitled to a jury trial. And they expressly waived in open court whatever rights they had to an advisory jury. On the other hand if, as I think, the Norris-LaGuardia Act's provisions have been adopted for this and like cases, cf. Part I, § 11 of that Act of its own force secured the right of trial by jury and forbade waiver otherwise than in wr. ing. Federal Rules of Criminal Procedure, Rule 23 (a).

23.

among other things, in that most frequently the question of the nature and character of the proceeding, whether civil or criminal, is determined at its end in the stage of review rather than, as it should be and as in my opinion it must be, at the beginning. *Gompers* v. *Buck's Stove & R. Co.*, 221 U. S. 418, 444. And this fact in itself illustrates the complete jeopardy in which rights are placed when the nature of the proceeding remains unknown and unascertainable until the final action on review.

Not only is one thus placed in continuing dilemma throughout the proceedings in the trial court concerning which set of procedural rights he is entitled to stand upon, whether upon the criminal safeguards or only on the civil. He also does not and cannot know until it is too late, that is, until the appellate phase is ended, whether one group or the other of appellate jurisdictional and procedural rules applies. Indeed he may find that his right of review has been taken either prematurely or too late depending entirely on whether the appellate court finally concludes that the proceeding has been civil or criminal in character.[35]

[35] In civil cases under Rule 73 appeal is taken by filing notice thereof "within the time prescribed by law," and generally, though there are exceptions, the time is three months. 28 U. S. C. § 230; *Mosier* v. *Federal Reserve Bank*, 132 F. 2d 710, 712. In criminal cases the Federal Rules now allow taking an appeal by filing notice of appeal as in civil cases. But an appeal must be taken by a defendant within 10 days after entry of judgment or after denial of motion for new trial. Rule 37 (a) (2). In *Nye* v. *United States*, 313 U. S. 33, it was held that 28 U. S. C. § 230 rather than the Criminal Appeals Rules governed timeliness in a criminal contempt appeal. But the new Criminal Rules would seem to apply to criminal contempts. *Moore* v. *United States*, 150 F. 2d 323, 324. See Rules 42 and 54; 55 Stat. 779, 18 U. S. C. § 689.

On certiorari, if the Rules of Criminal Procedure govern, there is also a difference. In civil cases the time for petitioning for certiorari is three months. In criminal cases the petition must be filed within thirty days after entry of judgment. Rule 37 (b) (2). Com-

See Swayzee, Contempt of Court in Labor Injunction Cases (1935) 21–22.

Precisely for these reasons this Court, when confronted in the *Gompers* case, *supra*, with a proceeding commingling civil and criminal features, such as we have here, refused to countenance such a mixture and, finding that the proceedings had been civil, held the criminal penalty of fixed terms of imprisonment to be invalid.[36] The Court said:

> "There was therefore a departure—a variance between the procedure adopted and the punishment imposed, when, in answer to a prayer for remedial relief, in the equity cause, the court imposed a punitive sentence appropriate only to a proceeding at law for criminal contempt. The result was as fundamen-

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pare *Nye* v. *United States*, *supra*, at 42, n. 6, as to the law prior to the new Criminal Rules.

The largest present difference between appeals in civil and criminal contempts is that, "except in connection with an appeal from a final judgment or decree, a party to a suit may not review upon appeal an order fining or imprisoning him for the commission of a civil contempt." *Fox* v. *Capital Co.*, 299 U. S. 105, 107, and cases cited. Compare *Lamb* v. *Cramer*, 285 U. S. 217. On the other hand, if the contempt is criminal, it may be directly reviewed. *Union Tool Co.* v. *Wilson*, 259 U. S. 107. It has been held that where the contempt is both civil and criminal, the criminal procedure governs for purposes of review so that there may be immediate review of both the part that is civil and the part that is criminal. *Union Tool Co.* v. *Wilson*, *supra*, at 111; *Nye* v. *United States*, 313 U. S. at 42–43.

[36] There as here the contempt proceedings were entitled and conducted as collateral to civil litigation between the parties and the order for contempt had been grounded upon disobedience to a restraining order issued in the course of the litigation, conduct which would have sustained either civil or criminal penalty. The Court of Appeals had held the proceeding criminal. But this Court held it to be civil since it was collateral, not an independent suit at law to vindicate the public interest. Hence, it followed that the criminal penalty could not stand. Neither the Norris-LaGuardia Act nor the War Labor Disputes Act was then in force.

tally erroneous as if in an action of 'A. vs. B. for assault and battery', the judgment entered had been that the defendant be confined in prison for twelve months." 221 U. S. at 449.

Not only must the punishments be kept separate and distinct.[37] This must be done with the entire proceedings.[38] Punishment and civil relief must be correlated with the character of the proceeding. Procedural rights not only in matters of practice,[39] but in others "which in-

[37] Throughout the opinion the Court insisted the two forms of relief are altogether incompatible not only for interchangeability between the two types of proceeding, but necessarily for commingling in indistinguishable conglomeration. Imprisonment as penalty for criminal contempt could be imposed for fixed terms, but in civil contempt this could not be done, the court's power being limited to remedial or coercive imprisonment, that is, until the person convicted should comply with the court's order. So also with fines, which in civil contempt can be no more in amount than is commensurate with the injury inflicted or is necessary to secure compliance and must be contingent, whereas the limitation requiring correlation to the amount of injury does not apply to fines in criminal proceedings. 221 U. S. at 442–444, 449. The same distinction applies as to the payment of costs. P. 447. See Part IV.

As will appear, this distinction is of paramount importance in this case. And so it was in the *Gompers* case, for the main cause had been settled, and the Court held this required not only reversal, but dismissal of the contempt proceeding, which would not have been true in one for criminal contempt. 221 U. S. at 451–452.

[38] As with the factor of relief, the opinion throughout uses alternative, not conjunctive, language concerning the two types of proceedings. Civil contempts, it said, "are between the original parties and are instituted and tried as part of the main cause. But on the other hand, proceedings at law for criminal contempt are between the public and the defendant, and are not part of the original cause." 221 U. S. at 445. See also p. 446.

[39] For example, most frequently perhaps the methods and times for securing appellate review, which at the time of the *Gompers* decision included whether the case could be reviewed by writ of error or appeal. 221 U. S. at 444; cf. *Bassette* v. *Conkey*, 194 U. S. 324. See note 40; see also note 35.

volve substantial rights and constitutional privileges," [40] are so distinct and in some instances contradictory that "manifestly" they cannot be intermingled. Nor can those applicable in criminal proceedings be disregarded when criminal penalty is sought. Not only such matters as the privilege against self-incrimination, the presumption of innocence, the necessity for proof beyond a reasonable doubt, [41] the allowance of costs, the appropriate mode of review [42] with attendant limitations of time and other differences, require this. What is most important, because the application and observance of all these rights and others depend upon it, is that the person charged is entitled to know from the beginning, not merely at the end or some intermediate stage, [43] in which sort of proceeding he is involved.

This, the Court said, "is not a mere matter of form, for manifestly every citizen, however unlearned in the law, by a mere inspection of the papers in the contempt proceedings ought to be able to see whether it was insti-

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[40] "The question as to the character of such proceedings has generally been raised, in the appellate court, to determine whether the case could be reviewed by writ of error or on appeal. *Bessette* v. *Conkey*, 194 U. S. 324. But it may involve much more than mere matters of practice. For, notwithstanding the many elements of similarity in procedure and in punishment, there are some differences between the two classes of proceedings which involve substantial rights and constitutional privileges. Without deciding what may be the rule in civil contempt, it is certain that in proceedings for criminal contempt the defendant is presumed to be innocent, he must be proved to be guilty beyond a reasonable doubt, and cannot be compelled to testify against himself. *Boyd* v. *United States*, 116 U. S. 616; *United States* v. *Jose*, 63 Fed. Rep. 951; *State* v. *Davis*, 50 W. Va. 100; *King* v. *Ohio Ry.*, 7 Biss. 529; *Sabin* v. *Fogarty*, 70 Fed. Rep. 482; *Drakeford* v. *Adams*, 98 Georgia 724." 221 U. S. at 444.

[41] See note 40.

[42] See notes 35, 37, 39.

[43] Cf. note 40.

tuted for private litigation or for public prosecution. . . . He should not be left in doubt as to whether relief or punishment is the object in view. He is not only entitled to be informed of the nature of the charge against him, but to know that it is a charge and not a suit. *United States* v. *Cruikshank*, 92 U. S. 542, 549." 221 U. S. at 446.

This rule has now been incorporated also in Rule 42 (b) of the Federal Rules of Criminal Procedure,[44] and was applicable in this case. By the terms of that rule the charge of criminal contempt was required to be "prosecuted on notice" and it was further commanded that the notice state "the essential facts constituting the criminal contempt charged *and describe it as such*," which was not done here. The rule was adopted to outlaw "the frequent confusion between civil and criminal contempt proceedings," following immediately a suggestion made in *McCann* v. *New York Stock Exchange*, 80 F. 2d 211.[45]

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[44] "A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the United States attorney or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest. . . ." Rule 42 (b), Federal Rules of Criminal Procedure.

[45] Judge L. Hand's opinion in the *McCann* case reads in part as follows: ". . . The respondent will often find it hard to tell whether the prosecution is not a remedial suit, undertaken on behalf of the client. This can be made plain if the judge entered an order in limine, directing the attorney to prosecute the respondent criminally on behalf of the court, and if the papers supporting the process contain a copy of this order or alleging its contents correctly. We think that *unless this is done the prosecution must be deemed to be civil and will support no other than a remedial punishment*. Nothing of

See also *Nye* v. *United States*, 313 U. S. 33, 42–43. But it flatly incorporates the effect of the decision in the *Gompers* case, *supra*.

The language used by the Court was language of the Constitution, reinforced by citation of the *Cruikshank* case. Careful as it was about expressly overruling prior decisions [46] where the Sixth Amendment's requirement [47] had not been observed, there can be no doubt that the Court was announcing for the future that the constitutional requirement must be complied with. And the result in the case itself accorded with what this view required.[48]

One who does not know until the end of litigation what his procedural rights in trial are, or may have been, has

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the sort was done here, and the order must be reversed. . . ." (Emphasis added.) 80 F. 2d 211, 214–215.

The possibilities of confusion are multiplied when the contempt is instituted in a suit in which the United States is a party, since the United States may bring civil as well as criminal contempt proceedings. *McCrone* v. *United States*, 307 U. S. 61.

[46] The Court said: "Inasmuch, therefore, as proceedings for civil contempt are a part of the original cause, the weight of authority is to the effect that they should be entitled therein. But the practice has hitherto been so unsettled in this respect that we do not now treat it as controlling, but only as a fact to be considered along with others, as was done in *Worden* v. *Searle*, 121 U. S. 25, in determining a similar question." 221 U. S. at 446.

[47] "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and *to be informed of the nature and cause of the accusation*; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence." U. S. Const. Amend. VI. (Emphasis added.)

[48] Not only in the ruling that reversal was required for the imposition of the criminal penalty in the proceeding held to be civil, but also in the order for dismissal on the ground that the cause, including the contempt phase, had become moot. See note 37 *supra*.

no such rights. He is denied all by a hide-and-seek game between those that are criminal and those that are civil. The view which would seem to be the only one consistent with the whole spirit of the Constitution, and with the nature of our free institutions, is that all of the constitutional guaranties applicable to trials for crime should apply to such trials for contempt, excepting only those which may be wholly inconsistent with the nature and execution of the function the court must perform.[49] As has been said, courts in performing this function are not above the Constitution; rather they are empowered to perform it in order to make the Constitution itself operative.[50] Accordingly, not the least but the greatest possible application of it to this phase of their work is the only rule consistent with their place in the constitutional scheme. *In re Michael*, 326 U. S. 224, 227.

Hence, whatever may be true of indictment and jury trials, I see no compelling reason whatever for not applying the other limitations of the Sixth Amendment. None of them is inconsistent with the due and proper performance of the court's function in criminal contempt. Some at the least are applicable by virtue of the due process guaranty of the Fifth Amendment. "Due process of law, therefore, in the prosecution of contempt, except of that committed in open court, requires that the accused should be advised of the charges and have a reasonable oppor-

[49] Cf. *In re Michael*, 326 U. S. 224, 227; dissenting opinion of Holmes, J., in *Toledo Newspaper Publishing Co.* v. *United States*, 247 U. S. 402, 422; *Michaelson* v. *United States*, 266 U. S. 42, 67: "The only substantial difference between such a proceeding as we have here [criminal contempt], and a criminal prosecution by indictment or information, is that in the latter the act complained of is the violation of a law, and, in the former, the violation of a decree. In the case of the latter, the accused has a constitutional right of trial by jury; while in the former he has not."

[50] See *Ex parte Hudging*, 249 U. S. 378, 383, quoted in note 30 *supra*.

tunity to meet them by way of defense or explanation. We think this includes the assistance of counsel, if requested, and the right to call witnesses to give testimony, relevant either to the issue of complete exculpation or in extenuation of the offense and in mitigation of the penalty to be imposed." *Cooke* v. *United States*, 267 U. S. 517, 537. Only one case, apart from those involving indictment or jury trial, has held the Sixth Amendment inapplicable in such proceedings.[51] Whether or not that case was a departure from our long established tradition that in criminal proceedings the defendant is entitled to be confronted with the witnesses against him, other departures should not be made.

Surely the rights to a speedy and public trial, to have compulsory process for obtaining witness in his favor, to have the assistance of counsel for his defense, and, as the *Gompers* case held, to be informed of the *nature* as well as the cause of the accusation, cannot be denied in our system to any person charged with crime, with the single exception of contempts committed in the immediate presence of the court by way of interference with the proceedings. Those guaranties are in no way inconsistent with the court's proper and complete discharge of its function in contempt. And they would seem to be essential to any conception of a fair trial as the Fifth Amendment's due process clause comprehends this.

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[51] *Blackmer* v. *United States*, 284 U. S. 421, 440. The ruling was first made in *Myers* v. *United States*, 264 U. S. 95, 104–105, in connection with a statutory venue problem relating to judicial districts and divisions which is correlative constitutionally to the right of jury trial. The ruling was reasserted in *Ex parte Grossman*, 267 U. S. 87, 117, which held that the pardoning power extended to criminal contempts. In the *Grossman* case the statement was obviously dictum. In the *Myers* case it was dictum as to all guaranties except perhaps that of trial in the district where the crime was committed, a guaranty, as stated above correlated to jury trial.

When the assertion and securing of all other rights depends upon one, that one is the core of all. Here the right "to know that it was a charge, and not a suit" comprehended all other procedural rights in the trial and appellate courts. Without this, none could be asserted or maintained. The denial of that right, deferring it until the decision here is handed down, is in my opinion not only a denial of all. It is a violation both of the Constitution and of Rule 42 (b).

But we are told that this, and all that followed or may have followed from it, make no difference because there was no prejudice. There are at least two answers. This Court has held that the denial of constitutional guaranties in trials for crime is in itself prejudice. *Kotteakos* v. *United States*, 328 U. S. 750, 765, and cases cited in n. 19. The other, there was prejudice and in the most important thing beyond knowing the nature of the proceeding in advance of trial, namely, in the penalty itself.

IV.

Not only was the penalty against the union excessive, as the Court holds. Vice infected both "fines" more deeply. As the proceeding itself is said to have been both civil and criminal, so are the two "fines." Each was imposed in a single lump sum, with no allocation of specific portions as among civil damages, civil coercion and criminal punishment. The Government concedes that some part of each "fine" was laid for each purpose. But the trial court did not state, and the Government has refused to speculate, how much was imposed in either instance for each of those distinct remedial functions.

This was in the teeth of the *Gompers* and other previous decisions here. The law has fixed standards for each remedy, and they are neither identical nor congealable. They are, for damages in civil contempt, the amount of injury

proven and no more, *Gompers* v. *Buck's Stove & R. Co.*, *supra*, at 444; for coercion, what may be required to bring obedience and not more, whether by way of imprisonment or fine; [52] for punishment, what is not cruel and unusual or, in the case of a fine, excessive within the Eighth Amendment's prohibition. And for determining excessiveness of criminal fines there are analogies from legislative action which in my opinion are controlling.[53]

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[52] As stated in note 37, coercive relief is civil in character, *Gompers* v. *Buck's Stove & R. Co.*, 221 U. S. 418, 442, the decree being when imprisonment is imposed that the defendant stand committed unless and until he performs the act required by the court's order. When this is done the sentence is discharged, for the defendant carries the keys of his prison in his own pocket. *In re Nevitt*, 117 F. 448, 461. The limitation is a corollary of the civil character of the remedy. This forbids imposition of fixed-term sentences for coercive purposes. *Gompers* v. *Buck's Stove & R. Co.*, *supra*, although they have "incidental" coercive effects. *Id.*, at 443.

The purpose and character of the relief, not its particular form, determine its limits. *Id.*, at 443, citing *Doyle* v. *London Guarantee Co.*, 204 U. S. 599, 605, 607. Hence, when a fine is used in substitution for coercive imprisonment, it also must be contingent, giving opportunity for compurgation. Unless this is done, the fine takes on punitive character. *Doyle* v. *London Guarantee Co.*, *supra*.

[53] It is in defining the nature and character of criminal penalties that legislative judgment and, within the authority it confers, the judgment of the trial court rather than appellate courts have the widest range. Legislative experience and judgment in this field therefore furnish a measure entitled to great and in some instances I think conclusive weight for consideration of the allowable range of punishment, as such, in criminal contempts where the penalty is undefined by statute.

The only crime for which the amount of the fine has no maximum is treason, where the fine authorized is not less than $10,000. 18 U. S. C. § 2. For rescue of one convicted of a capital crime while going to or during execution the fine may be not more than $25,000. 18 U. S. C. § 248. Maximum fines of $20,000 are set for offering a bribe to a judicial officer and for acceptance of a bribe by a judge. 18 U. S. C. §§ 237, 238. The same maximum is set for mailing matter with intent to increase weight in order to increase the compensation

The Government concedes that the Eighth Amendment's limitation applies to penalties in criminal contempt; and that in civil contempt the damages awarded cannot exceed the proven amount of injury. It also concedes, as I understand, that purely coercive relief can be no greater than is necessary to secure obedience. But in its view there was no necessity here for allocation of specific amounts in order to comply with these distinct standards. Rather punishment and damages may be lumped with a third undefined amount for civil coercion; and the whole mass sustained, without reference to the constituent elements or any of the established standards for measuring them, other than by over-all application of the Eighth Amendment's limitation to the mass. And in this view it maintains neither "fine" is excessive.

Obviously, however, when all these distinct types and functions of relief are lumped together, in a single so-called "fine," none of the long established bases for measurement can be applied, for there is nothing to which they can apply. We can only speculate upon what portion of each "fine" may have been laid to compensate for damages, what for punishment, and what, if any,[54] for civil coercion.

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of a railroad mail carrier. 18 U. S. C. § 358. In some cases of embezzlement and like crimes, the fine may be the amount embezzled, *e. g.*, 18 U. S. C. § 173, and in one instance twice that amount. 18 U. S. C. § 172. But ordinarily the maximum allowed by Congress has been $10,000, and often it is less.

Moreover, where Congress itself has fixed a maximum fine for criminal punishment of the act held to be a contempt, that judgment would seem to furnish a standard to be applied in the contempt proceeding. See *In re Michael*, 326 U. S. 224, 227. In this case the War Labor Disputes Act authorized a fine of not over $5000 or imprisonment for not over one year, or both. 50 U. S. C. App. § 1506 (b).

[54] The fines in this case were flat fines imposed absolutely, without contingency for compurgation or otherwise. The court acted on the Government's recommendation, which as to the union was made on the basis of $250,000 a day for the fourteen days elapsed after the restraining orders issued and the violations occurred. No part of the

Moreover, the District Court made no findings whatever concerning the amount of civil damages sustained, even if it could be assumed that there was evidence to sustain such findings.[55] And on the record none of the "fine" was made contingent, affording an opportunity for compurgation, as is required for coercive penalties.[56]

It follows that we have no basis except our own speculative imagination by which to determine whether the so-called "fines," or either of them, are excessive as damages, or indeed as coercive relief looking to the future, or as penalty for past crime.

In this state of things, it is utterly impossible to perform our function of review in the manner heretofore required, even within the broad limits prescribed for cases of civil and criminal contempt. This commingling of the

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fine was laid contingently upon future conduct. Both penalties therefore would seem to be strictly criminal, or criminal combined with civil damages for past conduct, not coercive in the sense of coercive relief as contemplated in the decisions, see note 52, although the amounts fixed for each fine gave it "incidental" coercive effect in the popular sense. *Ibid.*

[55] The Government's asserted loss in revenues, chiefly relied on for this purpose, was not only highly speculative rather than proven in amount. It was injury which would have followed from the strike had it arisen before or after seizure. Such damages may result from any strike whether the Government or another is "employer," and would seem to be both speculative and indirect within the rule forbidding the award of such damages. *Hadley* v. *Baxendale*, 9 Ex. 341.

[56] See notes 54, 57. The order for coercive fines reads, by analogy to the order for coercive imprisonment, cf. note 52, that, unless there is obedience to the order of the court, the fine shall be paid on or before a day certain, in default of which the defendant shall be imprisoned until it is paid. See *Doyle* v. *London Guarantee Co.*, 204 U. S. 599, 602. In the case of corporations or unincorporated associations, the default provision is either that the responsible officers be imprisoned, *Parker* v. *United States*, 126 F. 2d 370, 379, or perhaps that execution issue against the contemnor's property. See *United States* v. *Ridgewood Garment Co.*, 44 F. Supp. 435, 436. Compare Rev. Stat. § 1041, 18 U. S. C. § 569, with 38 Stat. 738, 28 U. S. C. § 387.

various forms of relief, like that of the proceedings themselves, deprives these contemnors of any possibility for having the scope of the relief given against them measured according to law.

That is no insubstantial deprivation. When hybrid proceedings can produce hybrid penalties, concealing what is for punishment and what remedial, what criminal and what civil, and in the process can discard constitutional procedural protections against just such consequences, as convenience or other wholly discretionary impulse may command, then indeed to the extent we allow this will we have adopted the continental tradition of the civilians and rejected our own. No case in this Court heretofore has ever sustained such conglomerate proceedings and penalties.[57]

That the Government is complainant here, both as "employer" seeking remedial relief and in sovereign capacity [58] seeking to vindicate the court's authority by criminal penalty, does not nullify all these long established limitations or put the courts wholly at large, limited by nothing except their unconfined discretion as to the scope

[57] See the opinion of the Court, 330, U. S. —, —, n. 74. Only in rare instances have other federal courts, after consideration, done so. See *Kreplik* v. *Couch Patents Co.*, 190 Fed. 565. See also the discussion, by way of dictum, in *Hendryx* v. *Fitzpatrick*, 19 Fed. 810, 811, 813. In still other instances the two types of contempt have been mingled without discussion. See *Chicago Directory Co.* v. *United States Directory Co.*, 123 Fed. 194. And see *Wilson* v. *Byron Jackson Co.*, 93 F. 2d 577, dismissing for jurisdictional reasons an appeal from an order adjudging the appellants guilty of civil and criminal contempt.

[58] The two capacities are distinct, not identical. Each, it is true, may be exercised ultimately in the public interest. But if in the capacity of temporary "employer" the Government is to have the benefits of that status, it should be subject also to its limitations except as Congress otherwise provides. To jumble the two capacities as is done here is only to nullify the rights in trial and remedy of employees and others.

and character of the relief allowable. Power there is to take adequate measures when violation is clearly shown and adequate proof is made to sustain them. For proven violation, criminal penalty within the Eighth Amendment's limits as we would measure similar impositions placed by Congress, at the most; for damages proven and found, civil award commensurate with the finding; and for coercion, civil relief by way of imprisonment or "fine," but in either case contingent only, not final, giving opportunity for compurgation and for termination, on its being made, of further penalty for the future.

These are the limitations the law has prescribed. They apply equally when the Government is complainant, and whether in one capacity or the other, or both, as when others are.[59] They cannot be dispensed with, separately or by conglomerating all into a single indiscriminate lump, at the suit of the Government or another, in this case or for others. To permit this would be to throw overboard the limitations prescribed by law and make the courts purely discretionary arbitrators of controversies. That cannot be done in our system.

The Court seemingly recognizes this, in part, in the revision it makes of the District Court's penalties. Lewis' fine is affirmed in amount but wholy changed in character. Instead of composite relief as the District Court made it, the Court makes that fine wholly a criminal penalty, thus in effect increasing the amount of his criminal imposition. The union's fine, though held excessive and "reduced," by what standard is not apparent, is replaced by a flat criminal fine of $700,000 plus a contingent penalty of $2,800,000 said to be entirely for civil coercion, although the

[59] The limitations upon criminal contempt, procedural and remedial, always apply to the Government, for it alone can bring that proceeding. It cannot defeat them by mingling that proceeding and relief with civil ones, merely by virtue of being also the complaining civil litigant.

strike was ended in December. Any award for civil damages allegedly sustained apparently is eliminated.

The Court thus purports to make separate the distinct items of relief commingled in the District Court's action. But in doing so, in my opinion, it wholly disregards the established standard for measuring criminal fines and its own as well as the District Court's function relating to them. If Lewis and the union had been convicted on indictment and jury trial in a proceeding surrounded by all the constitutional and other safeguards of criminal prosecution for violating the War Labor Disputes Act, the maximum fines which could be applied by that Act's terms would be $5,000 for each. In addition, Lewis could have been imprisoned for a year.[*]

In my opinion, when Congress prescribes a maximum penalty for criminal violation of a statute, that penalty fixes the maximum which can be imposed whether the conviction is in a criminal proceeding as such for its violation or is for contempt for violating an order of court to observe it temporarily. *Gompers* v. *United States*, 233 U. S. 604, 612. If the fine or other penalty in such a case can be multiplied twice or any other number of times, merely by bringing a civil suit, securing a temporary restraining order and then convicting the person who violates it of criminal contempt, regardless of the order's validity and of any of the usual restraints of criminal procedure, the way will have been found to dispense with substantially all of those protections relating not only to the course of the proceedings but to the penalty itself.

But it is in relation to the flat criminal fine of $700,000 against the union that the Court's disregard of the constitutional and other standards is most apparent. By what measuring rod this sum has been arrived at as the appropriate and lawful amount, I am unable to say, unless indeed it is simply by a rough estimate of what the union should be forced to pay on all counts. Never has a crim-

[*] See note 53 *supra*.

inal fine of such magnitude been heretofore laid and sustained, so far as I am able to discover. And only for treason, with one other possible exception,[61] has Congress authorized one so large. Moreover, the Court's enumeration of factors to be taken into account indicates expressly, as I read the opinion, that one is the coercive effect of the imposition for the future, though it is thoroughly settled that in contempt criminal punishment is to be laid only for past conduct.[62] *Gompers* v. *Buck's Stove & R. Co., supra,* and authorities cited.

Thus, the Court in effect imposes double coercive penalties, in view of the additional contingent award of $2,800,000 for that specific and sole purpose. I think the criminal fine of $700,000 not only constitutionally excessive, far beyond any heretofore sustained for violation of any statute or order of court. It is also an unlawful commingling of civil coercive and criminal penalties, without the essential contingent feature in the coercive phase, under our prior decisions.

Moreover, it is the District Court's function, not ours, in the first instance to fix the amounts of criminal fines. In equity proceedings for coercive relief, appellate courts including this one have power to revise and fix awards for such purposes, and if damages also are sought to review amounts awarded for this purpose for consistency with the proof. *Gompers* v. *Buck's Stove & R. Co., supra.* But in a criminal proceeding which is at law even in contempt, *ibid.*, our function is not in the first instance to fix the fines ourselves. That function is the District Court's. *Ibid.* We can only determine whether those

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[61] *Ibid.*

[62] The opinion states: "In imposing a fine for criminal contempt, the trial judge may properly take into consideration . . . the necessity of effectively terminating the defendant's defiance as required by the public interest. . . ." 330 U. S. —, —.

imposed by it are excessive under the Eighth Amendment.

In its revision of the penalties therefore the Court in my opinion not only fails to unscramble the coercive and criminal elements, as the prior decisions here require to be done.[63] It imposes grossly excessive criminal penalties, determined in amount by wholly arbitrary estimate related to no previously established standard legislatively or judicially fixed. And in doing so, it usurps the District Court's function. All this flows in part at least from its basic error, which is its failure to follow the rule of the *Gompers* and other cases that not only civil and criminal penalties, but also civil and criminal proceedings are altogether different and separate things, and under the Constitution must be kept so.

Much more is involved in this controversy than the issues which have been discussed. The issues in the main suit have not been determined and it would be beyond our function to intimate opinion concerning them now. But beyond this controversy as a whole lie still graver questions. They involve opposing claims concerning the right to strike and the power of the Government, as against this, to keep the nation's economy going. Those are indeed grave matters.

No right is absolute. Nor is any power, governmental or other, in our system. There can be no question that it provides power to meet the greatest crises. Equally certain is it that under "a government of laws and not of men" such as we possess, power must be exercised according to law; and government, including the courts, as well as the governed, must move within its limitations.

[63] The statement in the *Gompers* opinion, 221 U. S. at 443, that criminal penalties have incidental coercive effects and civil ones incidental penal effects, was not intended to contradict its ruling that criminal penalties cannot be imposed in civil contempt proceedings or therefore commingled indistinguishably.

This means that the courts and all other divisions or agencies of authority must act within the limits of their respective functions. Specifically it means in this case that we are bound to act in deference to the mandate of Congress concerning labor injunctions, as in judgment and conscience we conceive it to have been made. The crisis here was grave. Nevertheless, as I view Congress' action, I am unable to believe that it has acted to meet, or authorized the courts to meet, the situation which arose in the manner which has been employed.

No man or group is above the law. All are subject to its valid commands. So are the government and the courts. If, as I think, Congress has forbidden the use of labor injunctions in this and like cases, that conclusion is the end of our function. And if modification of that policy is to be made for such cases, that problem is for Congress in the first instance, not for the courts.

MR. JUSTICE MURPHY joins in this opinion.